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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. ~~670~~ 32

CLYDE BROWN, PETITIONER,

vs.

ROBERT A. ALLEN, WARDEN, CENTRAL PRISON OF THE STATE OF NORTH CAROLINA, RALEIGH, NORTH CAROLINA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 31, 1952

CERTIORARI GRANTED MARCH 24, 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 670

CLYDE BROWN, PETITIONER,

vs.

ROBERT A. ALLEN, WARDEN, CENTRAL PRISON OF THE STATE OF NORTH CAROLINA, RALEIGH, NORTH CAROLINA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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[fols. 1-1a-1h] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

CLYDE BROWN, *Petitioner*,

vs.

J. P. CRAWFORD, Warden, Central Prison of the State of North Carolina, Raleigh, North Carolina, Respondent

PETITION FOR WRIT OF HABEAS CORPUS—Filed June 21, 1951

To the District Court of the United States for the Eastern District of North Carolina:

The petitioner, Clyde Brown, respectfully shows unto the Court:

1. That he is a citizen of the United States of America and of the State of North Carolina, and is a member of the Negro race.

2. That he is at the present time unjustly and unlawfully detained and imprisoned at the Central Prison of the State of North Carolina, in Raleigh, North Carolina, by virtue of a judgment and sentence of death by asphyxiation pronounced upon him by the Superior Court of Forsyth County, North Carolina on the 15th day of September, 1950, upon conviction of the crime of rape.

Petitioner avers that he is not guilty of the offense for which he was tried, convicted and is presently detained by the respondent in the death house of the Central Prison of the State of North Carolina awaiting the execution of sentence of death by asphyxiation on the 22nd day of June, 1951, and that the said imprisonment, restraint, and sentence are illegal and void, in that during the trial of petitioner before the Superior Court of Forsyth County petitioner was denied equal protection of the laws and due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

[fol. 1i] 3. That in order that this Court may fully appreciate the grounds for the instant petition, petitioner will set forth herein the circumstances leading up to the in-

stant petition and then will set forth the specific respect in which he alleges his right under the Fourteenth Amendment have been so violated as to render his conviction and the judgment and sentence passed thereupon null and void.

Your petitioner Clyde Brown, an illiterate Negro of about twenty years of age, was tried and convicted in the Superior Court of Forsyth County, North Carolina, of assaulting and raping a young white girl named Betty Jane Clifton. The crime was allegedly committed on the 16th day of June, 1950, and the defendant was brought before the court for trial at the September Term, 1950, of the Forsyth County Superior Court. At the time of his arraignment, and before pleading to the bill of indictment and before the selection of the jury, petitioner entered a special appearance and made a motion to quash the bill of indictment (Record, p. 22), upon the ground that the grand jury returning the indictment against the defendant was unlawfully constituted, in violation of the rights of the defendant as guaranteed him under the Fifth and Fourteenth Amendments to the Constitution of the United States, in that the members of said grand jury were selected and drawn with a view and purpose of systematically limiting the representation thereon of persons of the Negro race, to which race petitioner belongs, with the result that petitioner and members of his race are unlawfully discriminated against. The issue raised by petitioner's said motion was tried upon evidence presented, and the trial judge thereafter entered an order denying said motion (Record, pp. 49-52). Thereafter, in amplification and extension of his motion to quash the bill of indictment, petitioner, at the termination of the trial (Record, pp. 205-208), made a motion in arrest of judgment in which he sought to re-assert and expand the basis of his previous motion. This last motion the trial court also denied (Record, p. 207).

During the course of petitioner's trial, over the timely objection of the defendant, the State was allowed to introduce into evidence statements of petitioner in the nature of confessions of commission of the alleged crime. (Record, pp. 94-133.) Petitioner contends that the statements sought to be introduced as confessions were inadmissible for that they were unlawfully obtained, in violation of the guar-

anties of the Fourteenth Amendment to the Constitution of the United States. Upon the trial of issues thus raised, the trial court likewise overruled the petitioner's objection. Thereafter, upon trial of petitioner before the jury, he was convicted of the capital crime of rape, without recommendation of mercy, and the sentence imposed upon him was that of death by asphyxiation. (Record, pp. 208-209.) This latter conviction and sentence have been upheld by the [fol. 1k] Supreme Court of North Carolina, in an opinion, filed on the 2nd day of February, 1951 (State v. Brown, 233 N. C. 202, 63 S. E. (2d) 99). Petitioner is presently incarcerated on death row in the State Prison of North Carolina.

The evidence adduced by the state during petitioner's trial discloses that on Friday, June 16, 1950, at or around noon-time, one Betty Jane Clifton, a 17 years old high school student, was cruelly beaten and assaulted in the radio shop operated by her father, Thomas E. Clifton, on West 7th Street, in the City of Winston-Salem, North Carolina, which she was tending in the absence of her father. The evidence discloses that Betty Jane Clifton was beaten about the head with a rifle butt, or some other blunt instrument; she was found in the shop in an unconscious condition and removed to a local hospital where she hovered between life and death for many days. The defendant Clyde Brown was seen in the vicinity of the radio shop close to the time of the happening of the alleged crime, and was later arrested and held for sometime for investigation in connection with the crime. Various angles of his alleged connection with the crime were run down by local police officers, and after several days of detention without formal charge, the petitioner allegedly confessed the commission of the crime. Upon these representations of the State, petitioner was determined by the jury's verdict to have been the perpetrator of the crime.

4. That upon the affirming by the Supreme Court of North Carolina of his conviction and sentence by the Superior Court of Forsyth County, petitioner applied to the Supreme Court of the United States for a writ of certorari to review the decision of the Supreme Court of North Carolina. On the 28th day of May, 1951, the Supreme Court of the

United States denied petitioner's application for said writ with the following entry:

> "The petition for writ of certiorari is denied.
> Mr. Justice Black and Mr. Justice Douglas are of the opinion certiorari should be granted."

Petitioner now turns to the respect in which he claims that his conviction and the judgment and sentence passed thereupon are illegal, null and void.

Petitioner contends that in his trial he was denied equal protection of the laws by the arbitrary and discriminatory exclusion of Negroes from and the limitation of Negroes on grand and petit juries in Forsyth County, solely and wholly for reasons of race and color. Petitioner further contends that in his trial he was denied due process of law, in that during said trial the Trial Court admitted into evidence over petitioner's objection confessions allegedly made by petitioner, which were obtained under circumstances which, when laid beside the measurements long promulgated by the United States Supreme Court, made them constitutionally inadmissible. Such being the case, petitioner contends that his conviction, judgment and sentence are null and void and that, therefore, the imprisonment and restraint of petitioner, pursuant to said conviction, judgment [fol. 11] and sentence, is illegal.

Petitioner Has Been Deprived of the Equal Protection of the Law by the Discriminatory and Arbitrary Exclusion of Negroes From (Grand and/or) Petit Juries in Forsyth County, Solely for Reason of Race, Including the Grand Jury Which Indicted and the Petit Jury Which Convicted Petitioner

There is and can be no controversy with respect to the constitutional principal herein involved, as it is one that has long been established as the fundamental law. Consequently, the only issue that usually arises in this instance is whether or not the constitutional proscription involved has been disregarded. This Court is familiar with the statutes and procedure governing the selection of Grand and Petit Jurors in the State of North Carolina. Just about

two and one-half years ago this Court had occasion, in a *per curiam* opinion of one word, to reverse five convictions arising out of the State of North Carolina, on the grounds that Negroes had been systematically and arbitrarily excluded from grand and petit juries in Forsyth County, North Carolina, the very same county from which the instant proceeding comes. *Brunson* v. *North Carolina*, 333 U. S. 851; *Jones* v. *North Carolina*, *id.*; *James* v. *North Carolina*, *id.*; *King* v. *North Carolina*, *id.*; *Watkins* v. *North Carolina*, *id.* In each of the foregoing instances, Negroes were indicted by grand juries in Forsyth County on which there were no Negroes and under circumstances which revealed that for many years no Negroes had ever served on grand juries; also, in each instance, contrary to the instant situation, although Negroes were included on the convicting petit juries, the number of Negroes on such juries then and in the past years was disproportionately small to the number of Negroes residing in Forsyth County eligible for jury service. As has been hereinbefore set out, the instant proceeding arises out of the same county of the State of North Carolina as the *Brunson*, *Jones*, *James*, and *Watkins* cases, to wit, Forsyth County. It is the contention of petitioner that the situation which obtained at the time of his trial represented an attempt on the part of the jury commissioners of Forsyth County to give only token compliance to mandate of this Court as set out in the aforenamed cases; that is, instead of approaching the inclusion of qualified Negroes on grand and petit juries in Forsyth County as a matter of general and ordinary jury selection [fol. 1m] procedure, petitioner contends that the facts in evidence and the circumstances herein show that the said jury commissioners have studied and purposefully limited the number of Negroes on grand juries to no more than one or two at a given time (R. 36-37), and the number of Negroes called to serve on petit juries to no more than four or five (R. 40-42). This Court has stated, in *Cassell* v. *Texas*, 339 U. S. 282, 286:

> "If . . . commissioners should limit proportionally the numbers of Negroes selected for grand jury service, such limitation would violate our Constitution."

And, at 287:

> "Proportional racial limitation is therefore forbidden. An accused is entitled to have charges against him considered by a jury in the selection of which there has been neither inclusion nor exclusion because of race."

See also *Virginia* v. *Rives*, 100 U. S. 322, 323.

The United States Census for 1940 discloses that the total population of Forsyth County was, as of said census, 126,475, consisting of 41,152 Negroes and 85,323 whites, the per cent of Negroes being 32.5% of the total. This census further shows that the total number of persons in Forsyth County 21 years of age and over were 75,556, of which 25,057 are Negroes, or approximately one-third of the total. It is thus apparent from the record, and it is a fact, that the foregoing proportion of Negroes in Forsyth County has never been even remotely reflected in the proportion of Negroes who have served on juries in Forsyth County. While it is an accepted principal that proportional representation of Negroes or any other racial group on every jury is not required, *Cassell* v. *Texas, supra*, disproportional representation of Negroes on juries in a given community for a number of years, when considered in the light of the proportion of Negroes of the total population, is strong evidence of the violation of the rights claimed, and one would have to be unduly credulous to accept the argument that the inclusion of Negroes on jury panels in consistently and unvarying small numbers, such as one or two at a time, was solely the handiwork of chance. As this Court said in *Smith* v. *Texas*, 311 U. S. 128, 131:

> "Chance and accident alone could hardly have brought about the listing for grand jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service."

[fol. 1n] Although, the statute of the State of North Carolina (Gen. Stats. of N. C. 1943, sec. 9-1) charges the commissioners of the several counties with the affirmative duty

of resorting to the tax records of their respective counties and other sources for the purpose of fairly apprising themselves of the persons who are eligible for jury duty, the record in this case shows that the jury commissioners of Forsyth County, without further inquiry or consideration (R. 30, 37, 43), accepted as the jury panel for the period during which petitioner was indicted and tried a list of 40,000 names taken from the county tax records for the year 1948, which was tendered to them for this purpose, (R. 30, 31, 43). At the same time, although the commissioners admittedly knowingly failed to resort to sources other than tax records to obtain the names of persons who were qualified for jury service, although the aforementioned statute provides for the same, they sought to justify the consistent paucity of Negroes on grand and petit juries in Forsyth County upon the ground that Negroes comprise only about 16% of the taxpayers in Forsyth County (R. 36, 48). And, even if such contention be conceded, it is an accepted and a recorded fact that representation of Negroes on juries in Forsyth County has never even approximated 16% of the persons called for jury service in said county. Irrespective of the decision of the state courts on the federal right which was set up and claimed, it is the province of this Court to inquire not merely whether it was denied in express terms, but also whether it was denied in substance and effect. *Norris* v. *Alabama*, 294 U. S. 587, 590. Accordingly, whether a state law prescribes or does not prescribe a mode of jury selection which is designed to bring about equal protection of the laws in the administration thereof, as required by the Fourteenth Amendment, if the administrative agency which is charged with the duty of selecting juries pursues a course either through design or ignorance, which in fact results in the arbitrary exclusion of members of a given race from such juries, an infraction of the Constitutional requirement thus results. *Neal* v. *Delaware*, 103 U. S. 370; *Carter* v. *Texas*, 177 U. S. 442.

It appears as a matter of deduction from the record that no Negro served on the trial jury which convicted petitioner (R. 24), and it further appears from the record that only one Negro was on the indicting grand jury (R. 39), in con-

tinuing observance of what petitioner contends is a studied and purposeful program of limitation of the number of [fol. 10] Negroes on grand and petit juries in Forsyth County. It is unquestioned that indictment and conviction of a Negro by a grand and petit jury from which Negroes have been purposefully excluded solely for reasons for race deprives that defendant of equal protection of the laws. *Strauder* v. *West Virginia*, 100 U. S. 303; *Neal* v. *Delaware, supra; Bush* v. *Kentucky*, 107 U. S. 110; *Norris* v. *Alabama, supra; Hale* v. *Kentucky*, 303 U. S. 613; *Pierre* v. *Louisiana*, 306 U. S. 354; *Smith* v. *Texas, supra; Hill* v. *Texas*, 316 U. S. 400; *Patton* v. *Mississippi*, 332 U. S. 463; *Brunson et als* v. *North Carolina, supra*. Purposeful exclusion is shown even where some Negroes do serve as jurors if the proportion of Negroes on juries is infinitesimal in comparison with the proportion of Negroes in the community eligible to act as jurors. *Pierre* v. *Louisiana, supra; Smith* v. *Texas, supra*. The essential inquiry is not whether Negroes are proportionally represented on any one jury, but whether an historical pattern of Negro participation on juries demonstrates deliberate exclusion. *Patton* v. *Mississippi, supra; Atkins* v. *Texas*, 325 U. S. 398. It is submitted, therefore, that the facts in this case and the applicable law forcefully demonstrates that petitioner was denied equal protection of the laws in this instance and that the state courts committed error in denying his motion to quash the bill of indictment and the trial jury panel.

The Conviction of Petitioner Deprives Him of His Life and Liberty Without Due Process of Law in View of the Admission Into Evidence of His Alleged Confessions.

The alleged assault and rape of the prosecuting witness, Betty Jane Clifton, a young high school girl, occurred on June 16, 1950. The defendant, Clyde Brown was reported by witnesses for the state to have been seen in the vicinity of the radio shop in which the incident occurred at or around the time of its alleged occurrence (R. 82 et seq.). The petitioner was arrested without a warrant and held for questioning in connection with the crime at or around 12:30 a. m. on the morning of June 19th (R. 96). The undisputed evidence is that the defendant was held in

custody until the 24th day of June, 1950, before he was formally charged with the commission of the crime and was not given a preliminary hearing in connection there-[fol. 1p] with until the 7th day of July, 1950, more than 18 days after his apprehension. (R. 95 et seq.). It is also undisputed that during the time he was held in custody, the defendant was questioned repeatedly and persistently by police officers of the City of Winston-Salem in relays until they succeeded in obtaining from petitioner the sort of confession they desired (R. 95 et seq.). Although the officers contended that they warned petitioner of his rights, they made no effort to obtain counsel for petitioner until they had carried him through a searing inquisition and he had given them the incriminating statements.

General Statutes of North Carolina, 1943, Sec. 15-46 provides:

> "Every person arrested without warrant shall be either immediately taken before some magistrate having jurisdiction to issue a warrant in the case, or else be committed to the county prison, and, as soon as may be, taken before such magistrate who, on proper proof, shall issue a warrant and thereon proceed to act as may be required by law."

Although specifically enjoined so to do by the foregoing statutory provision, as has been hereinbefore set out, the officers who took petitioner into custody held him from the 19th day of June until the 24th day of June, a period of 5 days, without formally charging him with crime, and from the 19th day of June until the 7th day of July, a period of about eighteen days, before granting him a preliminary hearing (R. 98, 99). It is thus apparent that incriminating statements were elicited, he was being detained in violation of the laws of the State of North Carolina.

While the officers who had petitioner in custody contended that they advised him of his right, including the right to consult with counsel, it is apparent from the records as aforesaid, that counsel was not made available to petitioner until after the incriminating statements had been made. In determining whether or not the warning allegedly given petitioner, even if it should be conceded

that such a warning was given, meets the requirements of due process, it is submitted that this Court should take into consideration as a part of the circumstances the lack of intelligence on the part of the defendant as will certainly be revealed from a careful perusal on the whole record. A bald statement by officers to one of petitioner's intelligence and background in a situation of this kind that he has certain rights, knowing that he is in no position to avail himself of such rights without the affirmative help of his admonishers, it is submitted, becomes a [fol. 19] vain and useless act. Petitioner does not contend that the incriminating statements were obtained through physical violence, but he does contend that they were induced by the coercive circumstances set out in the record, and as such are similarly inadmissible.

Since *Brown* v. *Mississippi*, 297 U. S. 278, it has been the undeviating practice of this Court to reverse convictions after trials in which there was admitted into evidence confessions induced by physical and mental coercion. *Chambers* v. *Florida*, 309 U. S. 227; *Canty* v. *Alabama*, 309 U. S. 629; *White* v. *Texas*, 309 U. S. 631; *id.*, 310 U. S. 530; *Lomax* v. *Texas*, 313 U. S. 544; *Vernon* v. *Alabama*, 313 U. S. 547; *Ward* v. *Texas*, 316 U. S. 547; *Ashcraft* v. *Tennessee*, 322 U. S. 143; *id.*, 327 U. S. 274; *Malinski* v. *New York*, 324 U. S. 401; *Haley* v. *Ohio*, 332 U. S. 596; *Lee* v. *Mississippi*, 332 U. S. 742; *Watts* v. *Indiana*, 338 U. S. 49; *Turner* v. *Pennsylvania*, 338 U. S. 62; *Harris* v. *South Carolina*, 338 U. S. 68. In view of the fact that it is apparent from the record that, aside from the alleged confessions, a conviction of petitioner would have to rest upon flimsy and doubtful circumstantial evidence, it is submitted that it is particularly appropriate for this Court to review the facts herein to determine independently whether they spell out the type and sort of coercion which the foregoing authorities have determined to be unlawful.

Ward v. *Texas*, 316 U. S. 547, 555, provides the point of departure for evaluating the undisputed and uncontradicted evidence which exists in this case, for in that case Byrnes, J., stated the applicable criteria:

> "This Court has set aside convictions based upon confessions extorted from ignorant persons who have

> been subjected to persistent and protracted questioning, or who have been threatened with mob violence, or who have been unlawfully held incommunicado without advice of friends or counsel, or who have been taken at night to lonely and isolated places for questioning. *Any of these grounds would be sufficient cause for reversal.*" (Emphasis added).

The youthful age of petitioner (*Chambers* v. *Florida, supra; Haley* v. *Ohio, supra*); his illiteracy (*Harris* v. *South Carolina, supra; White* v. *Texas, supra*); the brutality of the crime involved (*Chambers* v. *Florida, supra; Ward* v. *Texas, supra*); his detention without hearing or arraignment. (*Harris* v. *South Carolina, supra; Turner* v. *Pennsylvania, supra; Watts* v. *Indiana, supra; Haley* v. *Ohio, supra*), and without any communication with friends [fol. 1r] or counsel (*Harris* v. *South Carolina, supra; Ashcraft* v. *Tennessee, supra; White* v. *Texas, supra; Chambers* v. *Florida, supra;* and the harrowing questioning which led up to the alleged confessions, all combined to make those confessions tainted and constitutionally inadmissible.

It is well settled that even where proof apart from a confession in evidence might be deemed sufficient to found a conviction, although, as aforesaid, such is not the case here; such proof will not influence the necessity for reversing a judgment of conviction where the confession was involuntary or coerced. *Haley* v. *Ohio, supra*, at 599; *Malinski* v. *New York, supra*, at 404.

It is submitted, therefore, that the state courts erred in admitting said confessions in evidence.

5. That, as aforesaid, the petitioner has exhausted all of his state remedies, including a petition for a writ of certiorari to the United States Supreme Court, and petitioner is, therefore, remediless save in this Court and by this procedure.

6. That no previous application has been made for the writ herein prayed for.

Wherefore, the premises considered, the petitioner prays:

(1) That a writ of habeas corpus directed to the said respondent, J. P. Crawford, may issue in his behalf so that petitioner may be brought forthwith before this Court;

(2) That said respondent be required to appear and answer the allegations of this petition;

(3) That following a full and complete hearing this Court relieve petitioner of said unlawful detention, imprisonment and sentence of death;

(4) That this Court issue forthwith an injunction specifically enjoining and restraining the respondent, J. P. Crawford, and his agents, officers and/or employees from putting into execution any sentence or judgment now standing against, or that has been imposed upon, this petitioner, in particular, in putting into execution on the 22nd day of June, 1951, or at any other time, the death penalty presently pending against petitioner, until such time as he and/or they shall have received direction and instruction in the [fols. 1s-1u] premises from this Court, and

(5) For such other and further relief as to this Court may seem just and proper under the circumstances.

Clyde Brown, Petitioner,

Duly sworn to by Clyde Brown. Jurat omitted in printing.

[fol. 1v] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

[Title omitted]

ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS—Filed July 2, 1951

The Petitioner, J. P. Crawford, Warden of the Central Prison of the State of North Carolina, answering the petition for writ of habeas corpus heretofore filed in this proceeding by the Petitioner, for his answer says:

1. The allegations contained in Paragraph 1 are admitted.

2. Answering the allegations contained in Paragraph 2, it is admitted that the Petitioner is confined in the Central Prison of the State of North Carolina awaiting

execution under a judgment or sentence of death pronounced upon him in the Superior Court of Forsyth County for the capital crime of rape; that except as herein admitted, the allegations contain d in Paragraph 2 are untrue and are, therefore, denied.

3. Answering the allegations contained in Paragraph 3, the Respondent alleges that the Petitioner, Clyde Brown, was convicted in the Superior Court of Forsyth County at the September, 1950, Term of the crime of rape; that by virtue of a judgment and sentence of death, the Petitioner was committed to the Central Prison of the State of North Carolina for the purpose of carrying out said sentence of death; the Petitioner was duly, regularly and lawfully convicted of a capital offense in a Superior Court of the State of North Carolina having jurisdiction over person of Petitioner and of the offense with which he was charged in the bill of indictment; it is admitted that the Petitioner, during the progress of the trial in the Superior Court of Forsyth County, made certain motions as are shown in the record of said trial and that the Peti- [fol. 1w] tioner made certain objections to the admission of evidence as are shown in the record of said trial in the Superior Court of Forsyth County; it is further admitted that the Petitioner appealed to the Supreme Court of North Carolina and that the judgment of death of the Superior Court of Forsyth County, was affirmed by the Supreme Court of North Carolina as shown by the opinion of said Court; that except as herein admitted and as may be hereinafter admitted in the Respondent's further answer to this petition, the allegations contained in Paragraph 3 are untrue and are, therefore, denied.

4. Answering the allegations contained in Paragraph 4, it is admitted that the Petitioner applied to the Supreme Court of the United States for a writ of certiorari to review the decision of the Supreme Court of North Carolina and that Petitioner's application to the Supreme Court of the United States was denied by that Court; that except as herein admitted, the allegations contained in Paragraph 4 are untrue and are, therefore, denied.

5. The allegations contained in Paragraph 5 are untrue and are, therefore, denied.

6. The allegations contained in Paragraph 6 are untrue and are, therefore, denied.

Further answering said petition for the purpose of the dismissal of same, by way of showing cause why the same should not be granted, and by way of plea in bar of the relief sought in said petition, Respondent, J. P. Crawford, Warden of the Central Prison of the State of North Carolina, says and alleges:

1. That the Petitioner, Clyde Brown, was duly indicted on a bill of indictment returned by a Grand Jury of the Superior Court of Forsyth County of the crime of rape, it being alleged in said bill of indictment that the Petitioner raped one Betty Jane Clifton, a high school girl in the eleventh grade, residing in the City of Winston-Salem; that as the Respondent is informed and believes, the Petitioner not only raped this young high school girl who was working in her father's radio shop on the date the crime was committed, but, in addition, the Petitioner cruelly beat [fol. 1x] and maltreated said Betty Jane Clifton, the victim of his assault, in a cruel and fiendish manner and as a result, this high school girl, Betty Jane Clifton, was taken to a hospital in the City of Winston-Salem where she remained unconscious and hovered between life and death for many days; that the Petitioner was duly tried in the Superior Court of Forsyth County, which said Court had jurisdiction over the person of the Petitioner and over the offense charged in the bill of indictment, and the Petitioner was duly convicted by a jury of the Superior Court of Forsyth County and sentence of death was entered against the Petitioner as required by the laws of the State of North Carolina; that Petitioner was convicted in said Superior Court after a regular, proper, lawful and constitutional trial in a Court which at all times had jurisdiction over the person of the Petitioner and of the offense charged, and no constitutional rights of the Petitioner were violated, and said Court at all times retained jurisdiction over the Petitioner and the offense charged and never at any time lost such jurisdiction; that in the organization, selection and constitution of the Grand Jury which indicted the Petitioner and the petit jury which

tried the Petitioner, no violations of the Fourteenth Amendment were committed, and in the admission into evidence of any confessions or admissions of the Petitioner, no violations of the Fourteenth Amendment or any constitutional rights of the Petitioner were committed; that the trial Judge duly passed upon the question as to whether or not persons of the Petitioner's race had been arbitrarily and systematically excluded from Grand Jury service, as well as from service on the petit jury or trial jury, and said question was determined adversely to the Petitioner; that the trial Judge duly passed upon the question, during progress of the trial, as to whether certain admissions or confessions made by the Petitioner had been extorted from the Petitioner by means of physical violence, threats, coercion or any other unconstitutional method and means; that said question was determined by the trial Court according to the lawful method and practice provided by the State of North Carolina for the determination of such [fol. 1y] questions, and the trial Court found, after a fair and impartial investigation, that said admissions or confessions on the part of the Petitioner should be admitted as evidence, and the Respondent alleges that no constitutional rights of the Petitioner were in any respect violated by the action of the trial Court and that the trial Court never lost jurisdiction of the cause and that said Court had the legal and constitutional power to pass sentence or enter judgment of death against the Petitioner, and it is further alleged that such judgment or sentence is in all respects valid, constitutional, legal and enforceable; that all of the record and proceedings, including the evidence elicited in said trial in the Superior Court of Forsyth County, is hereby referred to and made a part of this answer and further answer to the same extent as if the same were fully copied herein and set forth and a properly authenticated copy of said record, trial, motions, judgment and evidence will be offered in evidence on behalf of the Respondent in this proceeding.

2. That the Petitioner duly perfected an appeal from said judgment to the Supreme Court of North Carolina, and said Supreme Court passed upon all constitutional questions about which the Petitioner is now complaining

in his petition for writ of habeas corpus, and the said Supreme Court of North Carolina found that the Petitioner's trial had been valid, legal and proper and affirmed the judgment of death heretofore entered by the Superior Court of Forsyth County against the Petitioner; that said appeal and all the proceedings in the Supreme Court of North Carolina, including the opinion of said Supreme Court as officially reported in the case of State v. Brown, 233 N. C. 202, 63 S. E. (2d) 99, are hereby referred to and made a part of this answer and further answer as if fully copied herein and set forth, and a duly authenticated copy of all proceedings in the Supreme Court of North Carolina as a result of the Petitioner's appeal in said case will be offered in evidence by Respondent on the hearing of this proceeding.

3. That thereafter the Petitioner applied to the Supreme Court of the United States for a writ of certiorari and [fol. 1z] filed in said Court a petition for a writ of certiorari, with supporting brief and other necessary papers; that the Respondent, State of North Carolina, duly filed in the Supreme Court of the United States its brief opposing the granting of a writ of certiorari and requesting a dismissal of said application; that the Supreme Court of the United States denied Petitioner's application for certiorari on the 28th day of May, 1951; that said petition for certiorari so filed by the Petitioner, his supporting brief, the brief of the Respondent, State of North Carolina, filed in opposition to the Petitioner's application and all the record and papers in connection with said Petitioner's application for a writ of certiorari so filed in the Supreme Court of the United States are hereby referred to and made a part of this answer and further answer as if herein copied and set forth, and a duly authenticated copy of all said proceedings pertaining to Petitioner's application for certiorari so made in the Supreme Court of the United States will be offered in evidence by the Respondent upon the hearing of this proceeding.

Wherefore, Respondent prays the Court:

1. That the Petition for a writ of habeas corpus heretofore filed in this cause be dismissed.

2. That any writ of habeas corpus that may have been issued or may issue or that may be issued in this cause be denied, dismissed and discharged.

3. That the order or injunction heretofore issued restraining Respondent and putting into effect the judgment or commitment under which the Respondent has custody of and detains the Petitioner be dismissed.

4. That the judgment and commitment under which Respondent holds Petitioner and under which he detains and has custody of Petitioner be declared to be a legal, valid and proper judgment and not subject to any attack in a habeas corpus proceeding.

5. That Respondent be authorized to carry out and execute said judgment in accordance with the laws and [fol. aa] statutes of the State of North Carolina.

6. For such other and further relief to which Respondent may be entitled, and which may be proper in this proceeding.

Harry McMullan, Attorney General of North Carolina, J. Ralph Moody, Assistant Attorney General, D. Brooks Peters, General Counsel of the State Highway and Public Works Commission, E. V. Broghan, Jr., Attorney and Member of Staff of State Highway and Public Works Commission, Attorneys for Respondent, J. P. Crawford, Warden of the Central Prison of the State of North Carolina, Raleigh, N. C.

[fols. 1bb-1ee] *Duly sworn to by J. P. Crawford. Jurat omitted in printing.*

Proof service (omitted in printing).

[fol. 1ff] **Exhibit 1 to Answer**—Filed July 5, 1951

[File endorsement omitted.]

NORTH CAROLINA, FORSYTH COUNTY, IN THE MUNICIPAL COURT OF THE CITY OF WINSTON-SALEM

STATE

v.

CLYDE BROWN, Col.

WARRANT FOR ——

W. F. Reid, being duly sworn, deposes and says that Clyde Brown on or about the 16th day of June 1950, at and in the County aforesaid or within the corporate limits of the City of Winston-Salem, did unlawfully and wilfully, and feloniously rape and carnally know one Betty Jane Clifton, a female, forcibly and against the will of the said Betty Jane Clifton, against the statute in such cases made and provided and against the peace and dignity of the State and in violation of Section ——, Chapter ——.

W. F. Reid, Complainant.

Sworn to and subscribed before me this 24th day of June 1950. M. L. Ferrell, Clerk. By: O. R. Wilson, Deputy Clerk.

[fol. 2] STATE OF NORTH CAROLINA

To the Chief of Police, City of Winston-Salem, or Other Lawful Officer of Forsyth County—Greetings:

For the causes stated in the above affidavit, you are hereby commanded forthwith to arrest Clyde Brown and him safely keep, so that you have him before the Municipal Court of the City of Winston-Salem, on the 26th day of June 1950, then and there to answer the above complaint, and to be dealt with as the law directs.

Given under my hand and seal this 24th day of June 1950. M. L. Ferrell (Seal), Clerk Municipal Court, Winston-Salem. By: O. R. Wilson, Deputy Clerk.

Endorsed:

The following persons: W. R. Burke, W. F. Reid, J. R. Wooten, W. C. Burton and H. C. Carter were recognized in the sum of $25.00 each to appear as witnesses and testify in this action on behalf of the State at the next term of the Superior Court for the trial of criminal cases of said County, to be held on the 1st Monday in September 1950; I also send herewith the warrant and other papers in the above action and also state below the itemized bill of cost.

M. L. Ferrell, Clerk.

State v. Clyde Brown, Col., 1318 Wilson St. Warrant for—Rape. Issued 24th day of June 1950.

Summons as Witnesses: Betty Jane Clifton, 1046 Manly; Dr. Harry W. Goswick, City Hosp., Capt. W. R. Burke, W. F. Reid, John R. Wooten, W. C. Burton and H. C. Carter. [fol. 3] Rec'd 24 day of June 1950. Exec'd 24 day of June 1950. Ex. by Officer W. F. Reid.

IN THE MUNICIPAL COURT OF THE CITY OF WINSTON-SALEM

JUDGMENT

Upon the trial of this case the defendant is—

Defendant waives preliminary examination and bound over to Sep. 3, 1950 Term Superior Court of Forsyth County. Bond —$— Without Bond. Com: to jail.

This 7th day of July 1950.

M. L. Ferrell, Clerk.

IN SUPERIOR COURT OF FORSYTH COUNTY

ORGANIZATION OF COURT

July 3, 1950.

Be it remembered that a Forsyth County Superior Court is begun and being held at the Courthouse in Winston-Salem, N. C. on the 3rd day of July 1950, for the trial of criminal cases or civil cases, or both.

Hon. Dan K. Moore, Regular Judge, present and presiding.

Hon. Walter E. Johnston, Jr., Solicitor for the Eleventh Judicial District, present and prosecuting the criminal docket for this Court.

Upon the opening of Court today it is ordered that Court take a recess until 10 o'clock A. M. Wednesday, July 5, 1950.

Dan K. Moore, Judge Presiding.

Clerk: H. W. Floyd.

[fol. 4]

Wednesday, July 5, 1950.

Court opens pursuant to an order of recess on Monday, July 3, 1950.

Then comes Honorable E. G. Shore, Sheriff of Forsyth County, and in obedience to a venire to him directed by the Board of County Commissioners returns into open Court the following good and lawful persons summoned by him to serve as jurors, this the first week of this term of the Court, to wit, viz: Ira R. Fulton and others (naming them).

For reasons satisfactory to the Court the following good and lawful persons are excused from serving as jurors this the first week of this term of the Court, to wit, viz: John F. Davis, Mrs. J. H. Worrell and John Henry Conrad.

The names of the jurors were then placed in a hat and a child under the age of ten (10) years being present in open Court, the following good and lawful persons were drawn, chosen, sworn and charged to serve as Grand Jurors for the term of six (6) months, to wit, viz: G. Ivan Palmgren and others (naming them).

G. Ivan Palmgren is chosen and sworn to serve as Foreman of the Grand Jury for the term of six (6) months, and J. Grady Conrad is chosen and sworn to serve as Assistant Foreman of the Grand Jury for the term of six (6) months.

Jack Gough is chosen and sworn to serve as Officer to wait upon the Grand Jury for the term of six (6) months.

[fols. 5-6] IN SUPERIOR COURT OF FORSYTH COUNTY

ORDER APPOINTING COUNSEL FOR DEFENDANT—July 10, 1950

It having come to the Court's attention that Clyde Brown is the defendant in the aforementioned cause wherein he is charged with the capital offense of rape for which the punishment may be death; that the defendant is unable to employ counsel and that counsel should be appointed by the Court to represent the defendant;

Now, therefore, it is ordered that under and by virtue of General Statutes 15-4 it is hereby Ordered that Hosea V. Price, Attorney, is appointed to represent Clyde Brown in the charge of rape lodged against him.

[fol. 7] IN SUPERIOR COURT OF FORSYTH COUNTY

PLEA—September 4, 1950

The defendant, Clyde Brown, being called, comes to the Bar of the Court in his own proper person and forthwith it being demanded of him how he will acquit himself of the premises of the indictment above-named, charged upon him, saith that he is Not Guilty thereof, and thereof for good or for evil he puts himself upon his God and Country.

In this cause a true bill of indictment is returned into open Court against the defendant Clyde Brown by the Grand Jury, as follows: G. Ivan Palmgren and others (naming them), good and lawful persons of Forsyth County, North Carolina, heretofore drawn, sworn and impaneled according to law and charged to inquire for the State of and concerning all crimes and offenses committed within the body of the said county. It is presented in manner [fol. 8] and form following, that is to say:

IN SUPERIOR COURT OF FORSYTH COUNTY

BILL OF INDICTMENT—September 4, 1950

The Jurors for the State upon their oath present, That Clyde Brown late of the County of Forsyth, on the 16 day of June, in the year of our Lord one thousand nine hun-

dred and 50, with force and arms, at and in the County aforesaid, unlawfully, wilfully, and feloniously did assault one Betty Jane Clifton, a female, and her the said Betty Jane Clifton, unlawfully, feloniously, by force and against her will did ravish and carnally know against the form of the statute in such case made and provided and against the peace and dignity of the State.

Signed/ Johnston, Solicitor.

On the back of which is marked: No. 7079. State v. Clyde Brown. Indictment Rape.

Witnesses: Betty Jane Clifton, Capt. W. R. Burke, X W. F. Reid, X H. C. Carter, and Dr. Harry W. Goswick, X John R. Wooten, W. C. Burton, X T. E. Clifton.

Those marked —— sworn by the undersigned Foreman and examined before the Grand Jury, and this bill found; —— A True Bill.

G. Ivan Palmgren, Foreman Grand Jury.

[fols. 9-10] In Superior Court of Forsyth County

Order for Special Venire

To: Hon. E. G. Shore, High Sheriff of Forsyth County, Greeting:

Whereas, it has been found necessary to the end that a fair and impartial trial of the defendant, who stands charged with the crime of Rape, be had, that a special venire of sixty (60) persons be summoned to act as jurors, or so many of them as may be necessary so to do in the trial of said action;

Now, therefore, you are hereby commanded to summon such number of persons qualified to act as jurors from the body of said county, and to appear at the Courthouse in the City of Winston-Salem, County of Forsyth, State of North Carolina, at 10:00 o'clock A. M. on Tuesday, the 12th day of September, 1950, to the end that so many of them as may be chosen, sworn and impaneled shall act as jurors in said action.

Herein fail not, and of this writ make due return. This the 8th day of Sept., 1950.

IN SUPERIOR COURT OF FORSYTH COUNTY

MINUTES OF MOTION TO QUASH

The defendant, Clyde Brown, comes into open Court in his own proper person and through his counsel, Hosea V. Price, moves to Quash the bill of indictment, returned by the Grand Jury of Forsyth County, charging the defendant with the capital crime of Rape. This motion is overruled by the Court in accordance with a finding of Facts hereafter appearing in this record.

[fol. 11] IN SUPERIOR COURT OF FORSYTH COUNTY

DRAWING OF JURORS—REGULAR AND SPECIAL—September 12, 1950

Court opens pursuant to an order of recess on yesterday. At the opening of Court today the cases of State v. Edward H. Pugh, State v. James W. Burnett, and State v. Stewart Hiatt are still pending.

The defendant, Clyde Brown, again comes into open Court in his own proper person, and in the custody of the Sheriff of Forsyth County.

Then comes Honorable E. G. Shore, Sheriff of Forsyth County, and returns into open Court with the special venire to him directed by the Court, the following good and lawful persons, same being freeholders, summoned by him to attend at the Courthouse in Winston-Salem, N. C., on the 12th day of September, 1950, at 10:00 o'clock A. M., to wit, viz: Dewey Carroll and others (naming them).

The defendant, Clyde Brown, being at the Bar of the Court in his own proper person and in the custody of the Sheriff of Forsyth County; the prisoner was duly warned of his rights by the Solicitor prior to the names of the regular jurors being placed in the hat. The names of the regu-

lar jurors were then placed in the hat, and a child under the age of ten years, J. M. Doub, III, being present in open court, the following jurors were drawn, accepted by the State and the defendant and sworn, the same being regular jurors, to wit, viz: Jesse Styers, Robert G. Brown, C. E. [fols. 12-13] Angel, E. S. Nash, William T. Mowery, W. S. Parks, Joseph H. Mickey and L. K. Mowery.

After the panel of regular jurors was exhausted, the prisoner was again duly warned of his rights by the Solicitor and the names of the special venire were then called and the names placed in the hat, and a child under the age of ten years, J. M. Doub, III, being present in open court, the following jurors were drawn, accepted by the State and the defendant, and sworn, the same being special veniremen, to wit, viz: D. C. Smith, H. M. Kimel, R. L. Parr, and K. L. Smith.

Whereupon the prisoner, Clyde Brown, being at the Bar of the Court in his own proper person and in the custody of the Sheriff of Forsyth County, the foregoing good and lawful persons having heretofore been drawn, chosen and sworn, were duly and lawfully impaneled to try this case, as provided by law, at or about the hour of 5:20 o'clock P. M. on the 12th day of September, 1950.

After twelve jurors had been drawn, chosen, sworn and impaneled, it is ordered by the Court that a thirteenth or alternate juror be chosen in this case. Whereupon the defendant was again duly warned of his rights by the Solicitor, and a child under the age of ten years, J. M. Doub, III, being present in open court, the following juror, the same being the thirteenth or alternate juror, was drawn, accepted by the State and the defendant, and sworn, the same being a special veniremen, to wit, viz: C. L. Barkley.

Whereupon the prisoner, Clyde Brown, being at the Bar of the Court in his own proper person and in the custody of the Sheriff of Forsyth County, the foregoing good and lawful persons having heretofore been drawn, chosen and sworn, were duly and lawfully impaneled to try this case, as provided by law, at or about the hour of 5:30 o'clock P. M. on the 12th day of Sept., 1950.

[fol. 14] IN SUPERIOR COURT OF FORSYTH COUNTY

ORDER FOR ALTERNATE JUROR

It appearing to the Court that the defendant is on trial for a capital offense and the trial is likely to be protracted;

Therefore, after the jury had been duly impaneled and sworn, the Court directed that an alternate juror be selected, as provided for by law.

This 13 day of September, 1950.

[fols. 15-20] IN SUPERIOR COURT OF FORSYTH COUNTY

VERDICT—September 14, 1950

At or about the hour of 8:55 o'clock P. M. on the 14th day of September, 1950, the aforementioned good and lawful persons heretofore sworn and impaneled to try this case make known to the Sheriff that they are agreed upon a verdict in this case. Whereupon the Sheriff brought the jury into open Court and the following inquiries were made:

The Clerk: Gentlemen, answer to your names. Jesse Styers, Robert H. Bowen, C. E. Angel, E. S. Nash, William T. Mowery, W. S. Parks, Joseph H. Mickey, L. K. Mowery, D. C. Smith, H. M. Kimel, R. L. Parr and K. L. Smith. To which all answered, Present.

The Clerk: Gentlemen, have you all agreed?

Answer: Yes.

The Clerk: Who shall speak for you?

Answer: D. C. Smith.

The Clerk: Prisoner, stand up. Jurors look upon the prisoner and hearken to his cause. What say you for your verdict? Is he guilty of the Rape and felony whereof he stands indicated or not guilty?

Answer: Guilty, as charged in the bill of indictment.

The Clerk: So say you all, gentlemen?

Answer: Yes.

Upon the coming in of the verdict in this case the Court ordered that the jury be polled. Whereupon the Clerk called the names of each of the jurors and inquired of each juror if his verdict in this case is guilty and does he still

assent thereto, to which each juror answered "yes." At the close of Court today judgment has not been pronounced in this case.

[fol. 21] IN SUPERIOR COURT OF FORSYTH COUNTY

DEFENDANT'S STATEMENT OF CASE ON APPEAL

This was a criminal action tried before Honorable Dan K. Moore, Judge Presiding, at the September 4, 1950, Term of Forsyth Superior *Superior* Court, and a jury. The de-
[fol. 22] fendant appealed.

IN SUPERIOR COURT OF FORSYTH COUNTY

DEFENDANT'S EVIDENCE ON MOTION TO QUASH THE BILL OF INDICTMENT

STIPULATION

It is stipulated and agreed that the population statistics of the City of Winston-Salem and Forsyth County, according to the 1940 census and the 1950 census, are as follows: (See statistical chart marked Exhibit A):

[fol. 23] EXHIBIT A—CENSUS STATISTICS OF FORSYTH COUNTY 1940

	Total Population	Per Cent	Male	Female	Poll Tax Listing	All Persons Over 21 Years
White	85,323	68.1	41,475	43,848		
Colored	41,152	31.9	19,356	21,796		
Male						35,572
Female						39,984
Total	126,475					
			1950			
White	100,434	68	*	*	20,120	
Colored	45,792	32	*	*	2,987	
Total	146,226					

* These figures for 1950 census are not available.

Note: According to the 1940 census, the population for the City of Winston-Salem was 79,815; of said 79,815 persons, according to the 1940 census, 54.4 per cent was white and 45.1 per cent was Negro. According to the 1950 census, the population for Winston-Salem is 87,226.

[fol. 24] It is agreed between counsel representing the defendant, Clyde Brown, and the Solicitor for the Eleventh Judicial District, and said agreement was approved by Honorable Dan K. Moore, Judge Presiding at the September 4, 1950, Criminal Term of Forsyth County, North Carolina, that in the selection of the trial jury there were thirty-seven regular jurors called, of which at least eight were members of the Negro race, and there were twenty special veniremen called of which at least three were members of the Negro race. The Solicitor excused three prospective Negro jurors, two of whom were regular jurors of the female sex and one special venireman. All other prospective Negro jurors were excused by the Court for cause. When the panel of regular jurors had been exhausted, the defendant had seven challenges remaining and when the jury of twelve had been selected the defendant had one remaining challenge. There was no challenge from either the State or the defendant, to the thirteenth juror.

JOHN CLICK, first duly sworn, testified: My name is John Click. I am IBM Supervisor in the office of the Tax Supervisor of Forsyth County. In that capacity I have been requested by the Commissioners to furnish to the office of the Register of Deeds, from the tax records, a list of all people eligible for jury in Forsyth County. I furnish a list of all taxpayers in Forsyth County that are of age and residents. I determine that from my cards. That list is run on a tabulator, from the cards, in continuous form, the names of all the people and addresses, and the names on the list are furnished to the Commissioners for their approval. In making that list I have no knowledge of and make no determination of whether the prospective juror has or has not paid taxes for the previous year. They are qualified to my knowledge to serve on the juries by the reason of my coding. By my coding I pull out all juveniles, [fol. 25] all non-residents, all coding that is deceased, so those that I have are only those people that are residents and of age.

I make the list up once every two years and present it at the Commissioners' meeting the first week in June, and that is supposed to be a list of all the taxpayers, regardless of whether they are white or colored.

The scrolls in the tax office are separated as to white and colored. In making my list, I do not refer to books; I run from my cards. My cards are not separated as to white taxpayers and colored taxpayers; they are all together, white and colored, for each township in our whole county. They are alphabetically arranged. I do have a separation as to white and colored. On our machines, I feed in my cards. That machine is able to think for itself. It takes them all.

After I prepare the list, I turn it over to the County Commissioners and I have nothing further to do with it after that.

Cross-examination.

I am in charge of the IBM Department of the Tax Supervisor for the County of Forsyth, and in that capacity I put on an IBM card the name of each person who lists taxes, either by way of real property tax, personal prop-

erty tax, or poll tax. The only distinction with reference to any classification I make is that I give non-residents a particular dash on the card and I give children or persons under the age of 21 years a particular dash on the card.

When the time came to make up the list of taxpayers for Forsyth County from which I understood the jury list for the June and July meetings of the County Commissioners of 1949 would come, all of my cards were commingled, irrespective of race, white or colored, and they were placed in my machine, and the only distinction between any of the cards was with reference to the persons under 21 years of age and non-residents. There is a coding on the card [fol. 26] to indicate whether the taxpayer is a white person or a colored person. In running those cards through the machine, there is no distinction made whatever. They all go through, and the only thing taken out are the persons under 21 years of age and the non-residents.

Examination by the Court.

When I have completed my list, the list which I turn over to the Commissioners contains the names of all the taxpayers of Forsyth County with the exception of those under age and non-residents. Beside of the person's name on that list are two numbers, which numbers serve two purposes: 1. It tells the township of the individual, where he lives, resides; 2. It tells whether he is white or colored, because our tax books are set up that way.

Cross-examination continued.

When I presented the tax list to the County Commissioners last June, 1949, there was nothing on that tax list to indicate whether the persons who were listed there were colored or white. Mrs. Eunice Ayers, the Register of Deeds for Forsyth County and Clerk to the Board of County Commissioners for Forsyth County, requested me to make up this list and to assist her in preparing this list for the County Commissioners.

Re-direct examination.

I told his Honor that the list I presented to the County Commissioners bore two numbers, two code numbers, one

that would give the information as to what township the individual lived in, and the other to indicate as to whether the individual was white or colored, and I told the Solicitor that there was no indication on this list that was made up and presented to the County Commissioners in June, 1949, as to whether the individuals on that list were white or colored. I answered that question based on the fact that only the people, to my knowledge, that worked with the tax books, such as myself, would know, from those records, [fol. 27] whether they were white or colored. That was my reason for answering it. There is nothing on the face of the slip to indicate or show whether he is white or colored, that is, on this last list that I made up. There are those two codes on this list, but nothing to indicate whether it is white or colored unless you were to know all of our particular townships and how they are set up. Those same code numbers are on this last list, this list that was presented in June, 1949, and those are the same two numbers to which you can refer and determine, if you have the information and if you know the code, whether this party is white or colored and what township he lives in, and those same code numbers were on this list that was presented to the County Commissioners in June, 1949, from which the present Grand Jury was later drawn.

The coding that I speak of is simply a coding that is worked out in the Tax Department for Forsyth County. The coding is published downstairs in the Tax Supervisor's office. There is nothing secret about it that I know of.

Re-cross examination.

Q. Mr. Click, why do you keep those code numbers that you have described on these tax records?

A. Why do we keep them, sir?

Q. Yes. Why do you put them on there?

Objection; overruled; and defendant, in apt time, excepted—Exception No. 1.

A. To indicate the township in which the individual lives.

I keep those code numbers on the tax records, as I have described, for no other purpose than the purpose of keeping the tax records straight. I do not have any knowledge

about what the law requires with reference to keeping the tax records in that fashion.

The only time I have been present at the drawing of a jury list was when I was a child, six, seven or eight years [fol. 28] old, at which time I did the drawing.

I did not exclude any name from the list I furnished to the County Commissioners at the request of Mrs. Eunice Ayers and assisted her in making, because of race or color or creed.

Q. Every name, excepting those of persons under the age of 21 years and persons who were non-residents, was included in that list *that list* any kind of taxes in Forsyth County?

A. They were all in there, sir.

Re-direct examination.

I have never made a notation of what percentage of the names on the list I presented to the County Commissioners is white and what percentage is colored. I have run this list only one time. I have no knowledge of what percentage of the list is white and what percentage of the list is colored.

The list I prepared was prepared from all the taxpayers or persons listing taxes, regardless of what kind of taxes, whether it was poll tax, personal property taxes or freehold, and I put all those names on the list except the non-residents and the ones under 21 years of age. I know nothing about the law in regard to the qualifications.

Mrs. Eunice Ayers, first duly sworn, testified: My name is Mrs. Eunice Ayers. I am the Register of Deeds of Forsyth County, and as Register of Deeds I also serve as Clerk of the Board of County Commissioners.

The list of taxpayers which Mr. Click testified is prepared every two years and handed over to the County Commissioners is presented to the County Commissioners in regular session; of course, I am present. I have nothing further to do with the list after it is presented to the Commissioners, except to go ahead with the procedure of presenting them in the box when the proper time comes.

[fol. 29] The names appearing on that list come out on long sheets, as many sheets as the number of names require, and then they must be cut apart, and put into a box, Box No. 1, first. Mr. Click cuts them apart, under my supervision. Mr. Click does that after he presents the list to the County Commissioners. The names are cut apart, in uniform size.

After the names are cut apart and made of uniform size, they are placed in Box No. 1, and the jury is drawn at the regular sessions of the County Commissioners, and I am not present at the jury drawings. I am present at the June meeting and the July meeting. At the June meeting the list is presented and then the old names are taken out of the box, and all the names are put into Box No. 1, the first side of the box. I am present at that time. Later, when they are drawn, they are drawn from No. 1 and placed in No. 2. That is our six months' drawing.

Q. I think we are a little confused.

Q. You mean six months' drawing? No. That is when the box is prepared for drawings.

Q. That is June when——

A. Every two years.

Q. Every two years?

A. Yes.

The list from which the present Grand Jury was drawn was made up in June, 1949. I present that list to the County Commissioners. We place them in the box right then and there. In June the list is presented to the County Commissioners and, if I recall correctly, it is at the July meeting when they are placed in. I will have to have my memory refreshed from the minutes; but the list is presented in June and then the box is cleared of the old names and the new list put into Section #1 of the box at the July meeting. I do that work myself with the assistance of Mr. Click and whoever else happens to be there. At that particular time, Mr. Nat Crews, County Attorney, and I think Mr. Jack Gough was present, and Mr. Click, Mr. Craft, and Mr. Simpson, I believe, of the County Commissoners. [fol. 30] There might have been others; I recall those. Possibly Mr. Hanes was there. The minutes will show. I

don't know what the custom has been. That is the only time I have had anything to do. That was my first time. Of course, I read the statute and felt that we were following that as good as possible.

I have not been present at a drawing; merely in preparation of the jury box for drawings. In preparing that jury box, I prepared it with respect to the tax list of all tax listers. Approximately 40,000 persons or prospective jurors were concerned when I prepared the list. The pieces of paper that I handled had no indication whatsoever, that I could determine, as to whether they were white or colored. I could not have told you that the numbers were there. Mr. Click testified that code numbers were there, but, frankly, I didn't know they were on there; that didn't make any impression; just the names.

Cross-examination.

I became Register of Deeds of Forsyth County and Clerk to the Board of County Commissioners on March 15, 1949. The first and only jury box that has been organized since I became Clerk to the Board was the one that was organized at the June, 1949, and July, 1949, meetings. I requested Mr. Click to assist me in preparing a list of all the taxpayers of Forsyth County in making up this box, with the permission of the County Commissioners. Mr. Click and I finished preparing it sometime before the June 1949 meeting, and at the June 1949 meeting I presented it to the Board of County Commissioners. After that meeting it was turned back to me, when I further prepared the clipping of the names apart. They were all clipped apart in a uniform fashion. They were all printed on the list in a uniform fashion. As far as I am concerned, there is nothing on there but names and addresses of the persons.

When the Commissioners met in July, I was present, and Mr. Simpson and Mr. Craft, Commissioners, were pres-
[fol. 31] ent, and Mr. Crews and Mr. Gough were present, as well as I recall. At that time there were just three Commissioners, and Mr. Craft and Mr. Simpson were both present. Mr. Crews was present. The box was made up at that time. The about 40,000 names on the list I have

described as having been furnished to the Commissioners at the June 1949 meeting were all the names that were placed in the box. There was no name whatsoever excluded from that box from that list.

Examination by the court.

The June and July 1949 meetings were for the purpose of purging the box. I took out all names that had been in there prior to that time and destroyed those names, and in lieu of those names, as a new jury box, I put in a list of all the taxpayers of Forsyth County, approximately 40,000 names, as furnished me by Mr. Click, and in putting in those names none were excluded for any reason. After that box was prepared for use it contained the names of all tax listers in Forsyth County, regardless of race. Those names were taken from the 1948 list, the list for the previous year.

Cross-examination continued.

That box that was prepared in July has been in my control since that time. The Sheriff has a key and the County Commissioners have a key. The box remains in my control except at the time when we all assemble and draw the jury list from time to time; we keep it in our vault. I am not present at the drawing of the jury.

Re-direct examination.

Since I am not there, I don't know who is usually present at the drawing of the jury.

Nat S. Crews, first duly sworn, testified: My name is Nat S. Crews. I am County Attorney for Forsyth County. As such, I attend each meeting of the County Board of [fol. 32] Commissioners, and when legal matters come before them relating to the drawing of juries, or any other matters that the Commissioners want information about, I attempt to assist them in any way I can.

I was present in June when the jury list was made up, the list from which this present jury, that is serving this term of Court, was drawn. At the June 6, 1949, meeting

of the Forsyth County Board of Commissioners, the Commissioners met in the Small Courtroom of the Courthouse at 10:00 o'clock, at which meeting I was present. The minutes of the meeting, in part, reveal that "there was laid before the Board of County Commissioners, in accordance with the provisions of Section 9, Subsection 1, as amended, of the General Statutes of North Carolina, the tax returns of Forsyth County for the preceding year, of 1948, there being present when this list was presented: Eunice Ayers, Register of Deeds and Clerk to the Board, Nat S. Crews, County Attorney, John Click, in charge of the IBM machines of Forsyth County," and the records reveal that Messrs. Roy W. Craft, Chairman, James G. Hanes and William B. Simpson, members of the Board, were present. "Mr. Click explained to the Board of Commissioners the manner in which this list was prepared by the IBM machines, and stated that in the preparation of this list there was no discrimination whatsoever as to race, color, and so forth, Mr. Click stating the following: 'The jury list which is being presented to the Board of Commissioners at the June 6, 1949, meeting was prepared from the 1948 IBM card file and represents the tax returns of Forsyth County for the year 1948. All non-residents, persons under 21 years of age, and other ineligible for jury duty were eliminated without prejudice on the IBM machine. The card used in selecting the jury list which is being presented has produced a complete list of eligible persons without discrimination whatsoever, and every effort has been made to strictly comply with the provisions of Section 9, Subsection 1 of the General Statutes of North Carolina, as [fol. 33] amended.'" And, further, the minutes show that "Nat S. Crews, County Attorney, stated that Harry McMullan, Attorney General, had advised him that the 1947 amendment, H. B. No. 87 of the 1947 North Carolina Session, authorized, but did not require, the boards of county commissioners to use other sources of information in selecting the jurors than the tax lists." Then there is a reference to the date of Mr. McMullan's letter to me and where it is filed in my office. "The Board of Commissioners were of the opinion and so ordered that the list be confined to the tax returns; that to use other sources of informa-

tion would cause a duplication of names in the jury list and also would result in placing in the jury box many names of persons who were not qualified to serve, etc. The Board of Commissioners, upon examination of the jury list containing the tax returns of 1948 as above explained, ordered that the entire list be used so that there will be no discrimination as to persons and ordered that said list be the jury list of Forsyth County for the purposes set forth in the General Statutes of North Carolina relating to the same. The Board of Commissioners then ordered the Clerk to the Board to preserve said list of names and to be prepared to present same to the Board of Commissioners at their July 1949 meeting in accordance with the provisions of Section 9, Subsection 2 of the General Statutes of North Carolina." These minutes are signed by R. W. Craft, Chairman, and Eunice Ayers, Clerk to the Board.

The next record of the meeting of the Commissioners was the Commissioners' meeting of July 11, 1949. The Board of Commissioners for the County of Forsyth met July 11, 1949, in the Small Courtroom of the Courthouse, being present, Messrs. R. W. Craft, Chairman, and W. B. Simpson, member. On page 373 of the minutes of the Board this appeared: "The Board of Commissioners having, at the June 6, 1949, meeting, in accordance with Section 9, Subsection 1, as amended, of the General Statutes of [fol. 34] North Carolina, selected the names of persons for jury duty and ordered that said list of names constitute the jury list of Forsyth County and preserve as such, and did cause the names on said jury list to be copied on small scrolls of paper and put into a box which is used for said purposes, and did, before placing said names in said box, take therefrom all names of persons from said box and did destroy same, all in accordance with Section 9, Subsection 2, of the General Statutes of North Carolina, as amended by H. B. No. 87 of the 1949 General Assembly, the names of said jurors on the new jury list, which appeared on small scrolls of paper of equal size, being placed in Division 1 of said jury box." And the minutes for this meeting are signed by R. W. Craft, Chairman, and Eunice Ayers, Clerk to the Board. Those are the minutes for the July 1949 meeting.

I was present at the June 5, 1950, meeting of the Board of Commissioners for the County of Forsyth. The Forsyth County Board of Commissioners met June 5, 1950, in the Small Courtroom of the Courthouse, there being present Messers. R. W. Craft, James G. Hanes, and William B. Simpson. On page 431 of the minutes this appears: "A jury was drawn in accordance with the law made and provided for the following weeks of Superior Court. July 3rd, Criminal, sixty (60) names from which the Grand Jury is selected. July 10th, Criminal, forty-four (44) names. A list of the persons drawn is on file in the County Attorney's office, to which reference is hereby made." The names were drawn by a little boy who was brought to the Commissioners' meeting upon request of the Commissioners by one of the deputies sheriff. The little boy drew the names out of the box, drawing 60 names first, and then drawing 44 names, according to the record.

When the County Commissioners convene at their monthly meetings and the special meetings they transact the business of the County first, and then the drawing of the [fol. 35] jury usually takes places during the latter part of each meeting. The meetings take place as indicated here, in the Small Courtroom, and the jury box is opened to Division #1. The little boy stands on a chair or table, where he can reach it, and pulls the names out of the box. The three Commissioners sit behind two tables and they pass the names on down to my secretary, who writes the names on the jury orders. At the conclusion of the meeting the jury orders are signed by the Clerk to the Board and delivered to the Sheriff so the persons appearing thereon may be summoned for jury service. At that meeting and at that drawing there is no determination made as to the qualification of prospective jurors, to my knowledge.

I make no determination myself as to whether a person drawn from the box by the little boy is living or dead or a non-resident. If any determination is made it is made by the three Commissioners. The names are passed along before the two or three Commissioners, if three are present. The Commissioners have no discretion in the matter, except if they know of their own personal knowledge that

John Doe is dead or John Doe has moved out of the county, I think they are warranted in taking that name out.

On this occasion I don't recall that there was any occasion for leaving from that list any name. There is no procedure, to my knowledge, and I am present, to systematically eliminate persons of the Negro race. I was present at that drawing. On that occasion there was no determination made as to the qualification of any name drawn by the little boy, that I know of. All of the 60 and all of the 44 names that were drawn by the little boy were listed and accepted and handed over to the Sheriff's Department for summoning, to my personal knowledge. I will say that we transact a lot of business in three hours' time, and frequently I have to leave the courtroom and meet some delegation outside which has a road petition or something else they want brought to the attention of the Commis-
[fol. 36] sionres. I am not there every minute during the drawing of the jury by the little boy; I am there most of the time.

Sometimes I am up here in the courtroom when the Grand Jury is drawn. Of course that takes place before His Honor here in the courtroom. I am not required to be here, but I do come here on occasion. I don't believe I was here when the 18 names were drawn to make up and constitute the Grand Jury for the September 4th Criminal Term; I don't recall it; it made no impression on me. I believe if I had been here I'd recall it. I don't think I was present in Court.

Q. You said a moment ago, voluntarily, Mr. Crews, that at no time has there been—or something to that effect—that at no time has there been any effort made to eliminate persons of the Negro race when you are drawing the jurors. In line with that thought, Mr. Crews, would it strike you as odd that in the selection of the Grand Jury that there would always be, taking into consideration the population of Forsyth County as to Negro as well as white, that there would always be from one to two and no more Negroes appearing on the Grand Jury?

A. I think that is a conclusion. Whatever I'd say to you is a matter of opinion.

Q. In your opinion?

A. No, sir, that wouldn't make any great impression on me, for the simple reason that we don't know, as of today, how many persons whose names appear on the tax lists of Forsyth County are white or how many are colored. I mean, it would take some probably two or three days to do that. We do know that for 1948 the tax list, which is the foundation for this present Grand Jury, that the proportionate number or percentage of persons listing property for polls, it is about 85% or 84% white and only 16% colored. Those figures, Mr. Hinshaw, the Tax Supervisor, can tell you about that. You asked me for an opinion, so, therefore, I would say that that is a pretty good index as to the number of white persons on the tax lists [fol. 37] and the number of colored persons, as to the percentages.

I know that there are certain jury qualifications besides being a taxpayer, but those qualifications, the Commissioners do not pass on. They have no right to, after the jury box has been filled with the names. The Commissioners will speak for themselves, but from my observation the Commissioners would pass the name of an undesirable if it should appear on the list. They have no right to challenge the person's name, as I understand. That name goes on the jury order. They pass it, I think; they can explain. I would not say since I have been here that we have always had desirable persons on grand and petit juries—it depends on which side you are appearing on. They do meet the qualifications. I will say that I think the Board of County Commissioners consider only this: that they examine the tax returns, which is an entire list of the tax listers of the County, of all persons. They make an examination, and after the examination of that list in June of every odd year they order that that be the jury list of Forsyth County, as they did in this case, and in July, the subsequent month, they order that that list be placed in a box, as was done here. I wouldn't say that we always get the right person or right persons on the grand juries.

Cross-examination.

At the meeting of the Board of Commissioners for Forsyth County on July 11, 1949, R. W. Craft, Chairman, and W. B.

Simpson, member, were present, and at the June 5, 1950, meeting R. W. Craft, James G. Hanes and William B. Simpson were present. At the June 5, 1950, meeting of the Forsyth County Board of Commissioners, from the box that Mrs. Ayers, as Clerk to the Board, presented to the Board, the jury box that was made up at the July, 1949, meeting 60 names were drawn to serve as jurors at the July 3, 1950, Term of Criminal Court, and 44 names were drawn to serve as jurors for the July 10, 1950, Term of [fol. 38] Court. As I have previously stated, I don't think I was up here in open court when the grand jury was selected on the opening day of the July 3, 1950, Term of Criminal Court; I might have been; I don't think so.

Immediately upon the little boy drawing those 60 names out of the box, they are pushed down to my secretary, who copies those names on a jury order. Not three hours later, but immediately after the meeting of the County Board of Commissioners, my secretary takes that list of jurors to Mrs. Ayers, who is Clerk to the Board, and she signs it and it is turned over to the Sheriff of Forsyth County. That was done on this occasion.

Re-direct examination.

I did not say I was not in the courtroom for the drawing in June 1950. I was asked by the Solicitor and by defense counsel also whether or not I was present here when the Grand Jury of 18 names was drawn, and I replied that I don't think I was up here in the Court, because all of that is done under the direction of His Honor here and I have no duty up here. I do come up here occasionally. I don't know whether I was here or not; I don't think so. I was present when the 60 names were drawn and when the 44 names were drawn.

Howard W. Floyd, first duly sworn, testified: My name is Howard W. Floyd. I am Courtroom Clerk here. As such I was present in July 1950, when the Grand Jury was made up for this present term of court. I supervised the drawing under his Honor's direction. I cut the names up and placed them in a hat and then a child, who was present

in the courtroom, drew the names out of the hat. The child gave me the names as they were drawn from the hat. 18 names were drawn. I called the names of the jurors out and had them come up and sit in the jury box, and they [fol. 39] constituted the Grand Jury. The other names left in the hat were summoned as petit jurors. All of the names that were drawn were white, except one, Mrs. Mary Y. Matthews.

There was no occasion at that drawing of those names to take out any name because of being a non-resident, or deceased, or any other reason. The list was brought to me from the Sheriff's office and beside of the name was marked "summoned" or "not summoned" as the case may be. I did not put in the hat the names marked "not summoned." The names marked "summoned" were placed in the hat, and the first 18 names coming out of the hat, drawn by the child, were the ones serving as grand jurors for this term.

Examination by the court.

I do not know how many names the list contained which I received from the Sheriff, or when it was drawn. The list was delivered to me from the Sheriff's office the morning before Court opened. From that list I took the names of all persons who had actually been summoned by the Sheriff, placed those names in a hat, and a child of between three and four years of age drew those names out of the hat. The child could not read, to my knowledge. As the child drew each name out of the hat, he handed it to me; I called the name of the juror out, and that juror then became a member of the present Grand Jury, which passed on the bill of indictment in this case. No name drawn by that child was excluded from the Grand Jury, for any reason. There were only 18 names drawn, and they are the ones on the Grand Jury. There was no attempt on my part to place part of the names in one part of the hat and part in another; the names given to me on the list were thoroughly mixed up in the hat, and the first 18 names drawn from the hat then became the present Grand Jury.

[fol. 40] The State Offered the Following Evidence in Regard to Defendant's Motion to Quash the Bill of Indictment:

JACK GOUGH, first duly sworn, testified: My name is Jack Gough. I am a Deputy Sheriff of Forsyth County, serving under Sheriff E. G. Shore. Sheriff Shore is at present out of the city on an extradition matter.

A list of 60 names was brought into our office by Mr. Crews' secretary after the June meeting of the County Commissioners, which was to constitute the jury list for the July 3, 1950, Term of Court. All of the persons named on that list, that could be found, were summoned to appear at the July 3, 1950, Term of Court. I don't remember the number of persons summoned. I do recall that there were colored people, members of the Negro race, summoned for the July 3rd Term of Court; I don't know the exact number; it was four or five.

I recall that members of the Negro race have served here as jurors in previous terms of court. At the request of the Solicitor I have made an investigation with reference to that matter. First, I should like to explain that I cannot say to my definite knowledge that other than what I see up here are Negroes. I can say that a certain number live in colored residences and I take it for granted they are colored people, and some, to my personal knowledge, are colored, because I know them.

My independent investigation revealed that for the week of January 10th, for which week 54 jurors had been drawn, that week being the week the Grand Jury was drawn, said jury being drawn from the 54 names, there were five or more colored men or women on that particular week to my knowledge. There could have been more, but I could only identify five of them as colored. July 4, 1949, for which week there were 60 names drawn—the law having been changed in between those two periods—there were six or [fol. 41] more members of the colored race. January 9, 1950, for which week 60 names were drawn, there were five or more members of the colored race. July 3, 1950, for which week 60 names were drawn, there were four or more members of the colored race.

I also have some figures taken at random from the regular jury, which was composed of 44 names. On June 12, 1950, from 44 names drawn there were four members of the colored race—in each case it could be more. My references are to persons of the colored race that I know and have identified positively as being of the colored race.—June 19th, out of 44 jurors drawn, there were five or more members of the colored race. July 10, 1950, out of 44 jurors, there were five or more members of the colored race. September 5th, which is our present week, out of 44 jurors there were six or more members of the colored race. September 11, 1950, which will be our term next week, out of 44 jurors there are 7 or more members of the colored race. September 18, 1950, for that week, out of 44 jurors there are 5 or more members of the colored race. I went up a little ways and back a little ways.

From the list that was handed me by Mr. Crews' secretary the only indication thereon as to whether the person was a white or a colored person was that which would be of common knowledge to anyone that knows the City and County, as probably their addresses. I couldn't take a name on there and swear under oath that it was a member of the colored race, but I would take it for granted if they lived on East 14th Street or Cameron Avenue that they were members of the colored race.

Cross-examination.

For the week of September 18, 1950, the week after next, I would say that 5 or more of the 44 names summoned for jury service are Negroes. I say "5 or more" because it is just common knowledge that by their addresses and by serv-[fol. 42] ice on a lot of them that they are members of the colored race. I do not summon all of the jurors. The list of names is distributed among the deputies and each one serves so many. I gather that 5 of that 44 are Negroes from where they live and from personal knowledge of some of them. I could be in error, but if I am it is because there is a white family living over in the colored section, which could happen. I don't know of any colored families living over in the white section, maybe living on the lot. I do know there are some Negro families living in the Ardmore

section or on the fringe of it, but I know pretty much where they are. The only things I have to guide me are the addresses of the people on that list and personal knowledge of some of them. I reach my conclusion that of the 44 persons selected for jury service for the September 18th Term, 5 are Negroes, from the fact that they give certain addresses and I know that Negroes live in that section. I can verify that statement, but I have not attempted to do so by taking those five addresses and going to the houses, or by determining from the deputy who summoned each one of those persons.

At the January 10th Term of Court there were 54 persons drawn for jury service and of that number there were 5 Negroes. I reached my conclusion about that in the same way as the other, not from actually seeing Negroes about whose racial identity there could be no question, but simply by seeing the list and the addresses next to the names and reaching the conclusion that the person is a Negro; but, in another respect, I have been here four years and I have yet to see a jury in the box or sitting back in the courtroom on which there wasn't at least one member of the Negro race.

Roy W. Craft, first duly sworn, testified: My name is Roy W. Craft. I am Chairman of the Board of County Commissioners for Forsyth County, and I was serving in that [fol. 43] capacity during June of 1949. At that time Mrs. Eunice Ayers presented to the Commissioners a list of the tax listers of Forsyth County. There was nothing on that tax list to indicate to me whether any person whose name appeared thereon was a member of the Negro or white race. We instructed Mrs. Ayers to prepare that list by cutting the names apart in a uniform manner and presenting them at the July meeting, after scanning the list. Of course we did not take the time to read the entire 40,000 names, but we did glance through it, the Commissioners did, and we passed it on with the instructions to prepare it for our coming meeting. We, the Commissioners, were informed that that was the tax list of Forsyth County for the year 1948, and that it included all the names that appeared on the tax list,

excluding non-residents and persons under the age of 21 years.

At the July meeting the Commissioners met and prepared that jury box. There were no names left in the box; it was cleaned out entirely. All of the names that had been presented to the Commissioners at the June meeting were placed in that box in Section #1. The box is right here in the courtroom. None of the names presented to the Commissioners at the June meeting was excluded from the box. After that meeting the box was turned over to Mrs. Eunice Ayers, as Clerk to the Board, for safekeeping. At the July 1949 meeting there was no way for me to know whether the person was white or colored other than if I happened to know the person.

I was present at the June 1950 meeting when the 60 names were drawn for the July 3rd Term of Court. I saw the child draw those names from the box. The child is supplied by the Sheriff's Department. It isn't always the same child, but it is usually a very young child, certainly under the age of ten, and he is placed on a chair or up on the table alongside of that tall box, so he can reach in. The child draws them out one at a time and they are passed on [fol. 44] by the Commissioners down to Mr. Crews' secretary, who copies them on the jury list. There were no names excluded at the July 3rd meeting, to my knowledge. They were all turned over and listed on the jury list for the July 3, 1950, Term immediately after they were drawn—not two hours later, but immediately. After the names that were drawn were listed, those slips that had been pulled out were put back in the box, in the #2 section, for future use. At that meeting or any other meeting, the only way I could determine whether the persons whose names are drawn are white or colored is from personal knowledge of the individual. Occasionally I know them. I don't know them all, white or colored.

Cross-examination.

As far as my personal knowledge is concerned I don't know anything about that code. That is for the bookkeeping department downstairs. Mr. Click says there is one. There is a number of some kind on it, but I do not know

what it means. The jury box is here, if counsel desires to see one. I will be glad to show counsel one to let him see if he can tell whether it is white or colored. Mr. Click classes it as a code. We Commissioners do not take enough time to walk downstairs into the Tax Supervisor's office and decipher the code. The names are drawn by the little boy, both white and colored, and are immediately typed on that sheet. Even if I had the desire to go downstairs and decipher the code, I do not have the time. That would be considerable trouble. I would have to go downstairs and make a lot of inquiries. The code may be uniform, but we can't hold up a meeting for a fellow to go downstairs. If it were the digit "2" for colored and the digit "5" for a certain township, it wouldn't mean a thing to me. It is just a number, as far as I am concerned, and I am quite sure I can say that for the other Commissioners, because I have heard them say they didn't know one from the other. The numbers do appear on the lefthand corner of the list.

[fol. 45] Examination by the Court.

In originally placing the list in the box at the June-July meeting, 1949, there was no effort made by me or the Commissioners to either exclude or limit the number of people of the Negro race in that list. I assisted Mrs. Ayers in packing the names or scrolls in the box; the box was quite filled. That was a complete list of all the tax listers in Forsyth County for the year 1948, both white and colored, with the exception of those under 21 years of age and those known to be dead.

At the June 1950 meeting, when the 60 names were drawn from which the present Grand Jury were taken, there were no names excluded for any reason from the names drawn by the child from that box. There was no effort made at that meeting on the part of myself or any other member of the Board of Commissioners to limit or to exclude the name of any colored person from that jury list. The 60 names as turned over to the Sheriff, constituting the jury list for the July Term, contained the 60 names originally drawn by that child from the box.

NAT S. CREWS (Recalled to the stand by the Court) testified:

Examination by the Court.

In this county, we draw a Grand Jury the first week of the January Term, which serves for six months, and then at the July Term we draw another Grand Jury, which serves until the following January. Our grand juries serve for six months. We have a special statute for the county, enacted in 1937, which was amended in 1947 and again in 1949. The last amendment provides that the Grand Jury shall be selected to serve for six months after the first term of Court after the 25th day of December and after the 25th day of June of each year, I believe. A Grand Jury was selected in January of this year for this county and that Grand Jury served through the month of June of this year. The [fol. 46] present Grand Jury was selected on the 5th day of July of this year, that being the first day of the July Criminal Term, and that Grand Jury is still serving and will continue to serve until a new Grand Jury is selected in January.

At this point in the trial, as Mr. Crews left the stand he handed to the Court a paper writing which the Court directed to be marked:

"EXHIBIT A":

Chapter 206, 1937 Public Local Laws (as amended by Chapter 264, 1947 Public Local Laws, and as amended by Chapter 577, 1949 N. C. Session Laws).

An Act to Regulate the Grand Jury of Forsyth County.

The General Assembly of North Carolina do enact:

Section 1. That at the first week of the first term of court for the trial of criminal cases in Forsyth County after the first day of July, one thousand nine hundred and thirty-seven, there shall be chosen a grand jury as now provided by law, and said grand jury shall serve until the first day of January, one thousand nine hundred and thirty-eight "and thereafter at the first week of the first term of the criminal court convening after the twenty-fifth day of December and June of each year there shall be chosen a grand jury to serve for a term of six months."

Section 2. The judge presiding at the time of the selection of the grand jury shall charge it as provided by law, and at any time the Judge of the Superior Court presiding over the criminal court of Forsyth County may cause said grand jury to assemble and may deliver unto said jury an additional charge.

[fol. 47] Section 3. The judge presiding at any term of criminal court of Forsyth County may in his discretion discharge any or all of the members of the grand jury or fill any vacancies occurring in the grand jury by reason of death, removal from the county, sickness, or otherwise, and any such vacancy or vacancies shall be filled by drawing sufficient jurors to fill said vacancy or vacancies from the jury box, and said juror or jurors so drawn shall take the oath prescribed by law and shall fill out the unexpired term of the juror or jurors whose places they were drawn to fill. The presiding judge shall have the power in his discretion to appoint an assistant foreman, and said assistant foreman so appointed shall in the absence or disqualification of the foreman discharge the duties of the foreman of said grand jury.

Section 4. That at the first week of the terms of criminal court of Forsyth County at which a grand jury shall be selected in accordance with the provisions of this Act there shall be drawn and summoned sixty men in the manner now provided by law from which a grand jury shall be selected as herein provided for, and the persons drawn for service on the grand jury for the week at which said grand jury is selected and who are not selected to serve on the grand jury shall serve on the petit jury: Provided that for the second week of the term at which the grand jury is chosen and for each week of other terms of the Superior Court of Forsyth County, civil and criminal, both regular and special, forty-four jurors shall be drawn and summoned as provided by law.

Section 5. All members of the grand jury shall receive five dollars ($5.00) per day for their service for every day devoted to the duties of the grand jury.

Section 6. That all laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

[fol. 48] Section 7. That this Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 9th day of March, A. D. 1937.

Roy Hinshaw, first duly sworn, testified: My name is Roy Hinshaw. I am the Tax Supervisor for Forsyth County. I have served in that capacity since July 15th of this year. I have checked the tax listings for Forsyth County for the year 1948 with reference to the persons in Forsyth County, both inside and outside the City of Winston-Salem, who listed their poll taxes, and have broken the figures down with relationship to the members of the white race and the Negro race. My investigation revealed that for the year 1948, 7,659 white males between the ages of 21 and 50 listed their poll taxes in Winston Township, and there were 2,752 colored males between the ages of 21 and 50 who listed their poll taxes in Winston Township in 1948. In the County of Forsyth, outside Winston Township, there were 10,319 white males between the ages of 21 and 50 who listed their poll taxes in 1948, and there were 587 colored males between the ages of 24 and 50 who listed their poll taxes in the County of Forsyth, outside Winston Township in 1948. Every male person over the age of 21 and under the age of 50 is required to list poll taxes. 84.3% of all the polls listed were by white persons.

I believe it is true that it is a matter of common knowledge that the percentage of white people living outside the City of Winston-Salem is far greater than in the City of Winston-Salem, as compared with the colored population. Just exactly what the percentage is, I do not know and do not have at this moment.

Examination by the Court.

The list which I have given has no connection with the persons who actually paid poll taxes in 1947 or 1948. I [fol. 49] have given the numbers of polls listed.

Direct examination continued.

Every male person between the ages of 21 and 50 in the county is required to come to the list-takers in the Courthouse during the month of January, or, if it is extended, the month of February, regardless of whether they have property or not, and are required to list their poll taxes each year.

Defendant's motion is denied and defendant, in apt time, excepts—Exception No. 2.

In Superior Court of Forsyth County

Order on Motion to Quash Bill of Indictment

This cause coming on to be heard and being heard before Hon. Dan K. Moore, Judge Presiding, September 4, 1950, Criminal Term of the Superior Court of Forsyth County, and being heard upon motion to quash bill of indictment returned by the Grand Jury of Forsyth County, charging the defendant, Clyde Brown, with the capital offense of rape, and said motion being made by Hosea V. Price, Attorney, who made a special appearance for the defendant, Clyde Brown, and it appearing to the Court from the testimony and evidence of several witnesses under oath, and from the hearing held and conducted the Court finds the following to be facts:

Facts

That at the June 6, 1949, meeting of the Forsyth County Board of Commissioners there was laid before the Board of Commissioners the tax returns of Forsyth County for the year 1948, which; after an examination of same were ordered by the Board of Commissioners to be the Jury list of Forsyth County for the purposes set forth in Sec- [fol. 50] tion 9-1 of the General Statutes of North Carolina, as amended, the Commissioners being of the opinion and so ordered that the jury list be confined to the tax returns, and that to use other sources of information would cause a duplication of names in the Jury list and the

placing in the Jury box the names of persons who were not qualified to serve; that at the July 14, 1949, meeting the Forsyth County Board of Commissioners did cause the names of the Jury list which had been selected at the June 6, 1949, meeting to be copied on small scrolls of paper and put in division one of the Jury box, but before placing said names in the Jury box did take therefrom all names of persons from the Jury box and destroy same; that the tax returns of Forsyth County for the year 1948, which were laid before the Board of County Commissioners at their June 6, 1949, meeting, and which the Board of Commissioners ordered to be the Jury list of Forsyth County, was prepared at the request of Eunice Ayers, Clerk to the Board of Commissioners, and at the request of the Forsyth County Board of Commissioners on the International Business Machines leased by Forsyth County and used in the Forsyth County Tax Supervisor's Office for the purpose of preparing the tax records, under the direction of John Click, who was in charge of said IBM machines for Forsyth County at that time, and that said Jury list was prepared from the 1948 IBM card file and represented the tax returns of Forsyth County for the year 1948, and that said method of procedure of preparing the Jury list on said IBM machines did produce a complete list of eligible persons without discrimination, elimination, or limitation whatsoever as to persons of the Negro race and persons of African descent, or any other persons of any race, color, or creed; that at the June 5, 1950, meeting of the Forsyth County Board of Commissioners a jury of sixty names was drawn for the July 3, 1950 criminal term of the Superior Court of Forsyth County from which a grand jury was to be subsequently selected; the names [fol. 51] being drawn from division one of the Jury box by a child less than ten years of age, in accordance with Chapter 206, 1937 Public-Local Laws as amended by Chapter 264, 1947 Public-Local Laws, and as amended by Chapter 577 of the 1949 N. C. Session Laws, and in accordance with the General Statutes of North Carolina relating to same; that at the July 3, 1950, Criminal Term of the Superior Court of Forsyth County a Grand Jury of eighteen (18) persons was drawn in open Court by a child

less than ten (10) years of age from the list of sixty (60) names which were drawn at the June 5, 1950, meeting of the Forsyth County Board of Commissioners, All of the foregoing the Court finds to be facts: And from the testimony of various witnesses under oath from the hearing conducted, and from the facts found by the Court, the Court concludes as a matter of law:

Conclusions of Law

That the Jury Selection Statutes of North Carolina, Section 9-1, as amended, 9-2, 9-3, 9-24, and other General Statutes of North Carolina relating thereto, including Chapter 206, 1937 Public-Local Laws, as amended by Chapter 264, 1947 Public-Local Laws, and as amended by Chapter 577 of the 1949 N. C. Session Laws, were in all respects complied with in the preparation, selection and drawing of a Grand Jury for the July 3, 1950, Criminal Term of the Superior Court of Forsyth County, and that in all stages of the procedure followed in compiling a list of jurors there was no discrimination whatsoever as to race, color, or creed of persons, nor was there any plan, purpose in mind, or acts of any of the persons connected with the preparation, compiling and drawing of the Grand Jury of systematically limiting representation thereof of Negroes and persons of African descent, and that said Grand Jury of Forsyth County for the July 3, 1950, Criminal Term was in all respects lawfully constituted, and that the Constitution of the United States of America, and the [fol. 52] Constitution of North Carolina, and the General Statutes of North Carolina, and any and all Public-Local Acts relating to the preparation of the Jury list and the drawing of the Grand Jury for the July 3, 1950, Criminal Term of the Superior Court of Forsyth County have in all respects been complied with.

It is, therefore, ordered that the Motion of Clyde Brown to Quash the Bill of Indictment returned against him by the Grand Jury of Forsyth County, charging the defendant, Clyde Brown, with the capital offense of rape be, and the same is hereby in all respects dismissed.

September 11, 1950.

To the foregoing order of the Court, the findings of fact, conclusions of law and denial of motion contained therein, the defendant, in apt time, excepts—Exception No. 3.

IN SUPERIOR COURT OF FORSYTH COUNTY

JUDGMENT

Clyde Brown, you have been indicted, tried and convicted by a jury of your county of the rape of one Betty Jane Clifton without any recommendation of life imprisonment. The law prescribes, in General Statutes of North Carolina, Section 14-21, as amended, that the punishment for your crime is death. The judgment of the Court, therefore, is that you be remanded to the common jail of Forsyth County and there remain until the adjournment of this Court.

It is ordered that you be conveyed by the High Sheriff of said County of Forsyth to the Penitentiary of the State of North Carolina, and by him delivered to the Warden of said Penitentiary;

[fols. 53-55] And it is further ordered and adjudged that you remain in the custody of said Warden until Friday, the 20th day of October, 1950, and that on said day, between the hours of ten o'clock in the forenoon and three o'clock in the afternoon, that you be taken by the said Warden to the place of execution in said Penitentiary;

And it is adjudged that the said Warden then and there cause you to inhale lethal gas of sufficient quantity to cause death, and to continue the administration of such lethal gas until you are dead. And may God have mercy on your soul.

This the 15th day of September, 1950.

Dan K. Moore, Judge Presiding.

[fol. 56] IN SUPERIOR COURT OF FORSYTH COUNTY

STATE'S EVIDENCE

THOMAS E. CLIFTON testified: On the 16th day of June 1950 I was hauling soft drinks, and as an avocation I operated a radio shop up on West Seventh Street, between

Trade Street and Liberty Street, approximately 50 feet off of Trade Street and on the South side of Seventh Street. At the time this happened, my daughter, Betty Jane Clifton, was in charge of the radio shop in my absence. I have ten children, three girls and seven boys. I have a boy and a girl older than Betty Jane.

The school term had just closed and Betty Jane Clifton had just finished the ninth or tenth grade. At that time, June 16, 1950, she just stayed there in the radio shop and kept it open and took the radios in, if any were brought in. She would take the name of the person bringing the radio in, put it on a card and give the person a stub, and if anyone came after a radio, she would check the stub and take the stub and collect the money and put it in the drawer. She had been in charge of the shop since about the 7th or 8th of June. I do not know exactly what day school closed.

I don't know exactly what time Betty Jane went to the radio shop on June 16, 1950, but it was around 8 o'clock. I do not know how she got there on that occasion; I did not carry her to the shop that day. I left home first that day. She always goes down and catches a bus on the corner. The first time I went by the radio shop that morning was somewhere around 7:30. The shop was not open at that time. The next time I went by it was around a quarter past 12. I usually always check by there two or [fol. 57 three times a day, if I can. I had been on my regular drink routes that morning as a soft drink distributor. When I went there at approximately a quarter past 12, that was at the noon hour. At that time I drove up there and stopped. I saw the door was opened just about six inches—the door swings inward—and I knew that it wasn't supposed to be closed in hot weather. So I dashed in there and called Betty Jane's name. I couldn't see her anywhere and didn't hear no sounds, only just a faint sound. I didn't pay any attention to that.

I looked all around and I went next door and asked if they had seen her, and then I asked up at the tire shop if she had been up there and used the telephone or anything, and then I went back and went in the shop again and looked all around, and I kept hearing that little faint

racket, and I got to trying to detect where it was at, and I found the racket and found Betty Jane there, laying on her face, stretched out, making a noise, which was the racket I had heard, and then I dashed back out of there and called the ambulance and called Police Headquarters, and by that time people across the street knew there was something wrong, they had seen me running, and they came to my aid.

I don't know the size of my shop, exactly. It is somewhere around about 16 x 20. There is a counter in the shop, which is about 6 feet away from the back wall, and the counter runs parallel with the street. The side of the counter facing the street is all covered up, but the back side of the counter is open.

Betty Jane was lying on a bed, right underneath the bench or counter. The bed I refer to was just a little iron cot, and all that was laying on the cot was a quilt, and she was laying on the quilt, and there was a mattress on top of her. She was laying so flat that the mattress didn't have more than a very slight angle. Betty Jane was lying on her stomach and face, and had her [fol. 58] head turned sideways.

I saw all the blood and everything, a big puddle of blood on the quilt and things. When I found her I discovered all that. The top was broken off of one radio, and that is about the only thing I found other than that. I didn't find anything like a weapon, but I was right there when other people came in later, and I saw them find them. I went with Betty Jane to the hospital and then rushed back to the shop and got there about the time that the detectives got there. I'd say it was around five or ten minutes from the time I first saw Betty Jane until the time the ambulance arrived there; it wasn't very long; I'd say about 5 minutes.

I made no observation, myself, about her physical condition other than the state of unconsciousness I have described. When I went to the Emergency Room, they wouldn't let me in; they said - wasn't anything I could do. I could go on back, so I went on back to the shop.

The pocketbook you hand me looks like it is damaged pretty bad, but it looks like the one she used to have.

(Referring to photograph in billfold): That is her brother, Douglas, a picture of him. (Referring to other articles in billfold): I don't know anything about that or that (indicating). This is a key to the radio shop, my radio shop. (Referring to another photograph): I don't know that girl. That is all the pictures, I believe, that I know in that. This is a cleaner's check, from Advance Cleaners. I don't know anything about that card. I haven't seen that card there before; I heard her talking about having some books in the library or from the library.

Q. What is your opinion with reference to that being the pocketbook of your daughter, Betty Jane?

[fol. 59] Objection—overruled, and defendant, in apt time, excepts—Exception No. 4.

A. I didn't know too much about her pocketbook. My wife and her knew more about her pocketbook than I did, because my wife ordered it for her.

I don't know of anything, except my daughter, that I moved in my shop at the time I went in; I don't remember moving anything. The only thing that I moved was the mattress, off of her.

Cross-examination.

My radio shop is a small shop, measuring about 16 x 20 feet inside, and is on 7th St., just off of Trade St. There is about a 6-foot space from the counter to the back wall. The cot I spoke of is a little iron bed. It is all made together. It has legs on it, but it was flat on the floor. When it is raised up, there is about a foot or more under there, but it wasn't raised up; it was laid down. There is not room enough for it to be raised up there and sleep on it. That is why I always kept it flat. The bedding consisted of a mattress, the mattress we were using on the bed. That was all pushed back under the counter. The counter was around about 30 inches high. The top part of it served as a counter and the whole thing, whole top of it, served as a work bench.

After I went into my shop and discovered what I have testified to here, I went out of the shop and up the street. Some of the neighbors came from across the street to assist me. Mr. and Mrs. Grossman, who run a record shop

across the street from my radio shop, came across the street to help me. They came over to my aid after I came back from using the telephone. Immediately after I discovered my daughter there on the bed, I went outside and made an alarm and Mr. and Mrs. Grossman came over immediately. Mrs. Grossman stayed there with me and my daughter until the ambulance came.

[fol. 60] I testified that I didn't move anything at all except to take the mattress off the top of my daughter. I didn't move her body at all.

I have operated my radio shop in that spot there about two or three years. When the ambulance came and carried my daughter away, I went with her to the hospital. I stayed over there a few minutes and came right back to my shop. They wouldn't let me in, so I just came on back to the shop. I got back somewhere around about the time the officers got there.

Dr. HARRY W. GOSWICK testified: I am a practicing physician here in the City of Winston-Salem. I am a graduate of the medical school of the University of Tennessee. My academic education consisted of four years at Emory University and fours years at the University of Tennessee, following which I served a one-year internship at the City Hospital here, and two years as a resident at the same place. I have been practicing medicine since 1934 as a general practitioner. I have been admitted to the State Board of Medical Practitioners in the State of North Carolina.

(Defense counsel admitted Dr. Harry W. Goswick to be be a medical expert, and the Court so held).

I was called to the City Memorial Hospital on the 16th day of June of this year to see Betty Jane Clifton. I had not known her prior to that time. When I first saw her, she was admitted to the hospital, she was in Ward 211 and was still on a stretcher; she had not been put to bed. That was around 5 o'clock P. M.

At that time, 5 o'clock P. M. June 16, 1950, Betty Jane

Clifton was obviously beaten severely. Both of her eyes were swollen shut and blue; she had four or five lacerations on her right ear, two on her ear lobe, one in front of her ear, and another here (indicating) a large one above [fol. 61] her ear, and she had two cuts on the other ear, and one under her chin. She was in severe shock. Her blood pressure was down about 60 or 70. Her pulse was real rapid; it could hardly be counted. She had bubbling respiration, breathing with difficulty. She had to be given oxygen; and we had to use a suction to suck the secretions out of her throat. She was given blood and glucose intravenously to combat her shock, and at that time we did nothing to the cuts except wrap them up, because she was in too bad shape to do anything to her.

At that time, she was not completely unconscious, as we think of it. She would move about, thrash about in the bed and moan, but she did not know anything.

I was the attending physician for Betty Jane Clifton during her stay at the hospital, except for possibly four days over the 4th of July, when I was out of town.

When Betty Jane Clifton first came in the hospital, she was in shock, and she continued in shock for 48 to 72 hours, and we gave her glucose and blood and all those things to combat her shock. She remained in that same semi-conscious condition for approximately a month.

When she first came in the hospital, either that day or the next day, she was x-rayed and a fracture of the skull was found. She also had a fracture of the left lower jaw, just below the ear. There was also a fracture of the zygomatic arch, is the only way I know to say it—it is this cheek bone, in other words (indicating). There was also a fracture of the base of the eye socket, in which the eye sits. We continued to treat her, expectantly, more or less, to try to bring her out of her shock. She was given different drugs, penicillin and chloromycetin, to combat any infection that she might develop in her wounds. She progressed slowly. Several spinal punctures were done, which showed that she had in-[fol. 62] creased pressure in her spinal canal, and there was also blood in the spinal fluid, indicating some brain damage. For about a week we worked pretty steadily

with her, trying to get her back to some state to where we thought she might progress all right; and then there were several other bruises on her, also. On both hip bones there were large blue places, and on the back of her right hand there was a blue spot.

About a week after she was brought to the hospital, possibly the 23rd or 24th, I made an internal examination on her. The reason I had not made one before that time was because she was in such terrible shape that that was secondary in my mind, as to what had happened there. The first thing was to get her well. On the 24th I made a pelvic examination. I found a laceration about a quarter of an inch long, possibly an eighth of an inch deep, at the posterior part of her vagina—that is the back lower part—and also there was a tear in the hymen at—explaining in terms of a clock—7 and 3 o'clock. The hymenal ring was about 1/16 of an inch in depth, and it was torn completely back on each side, which would be 1/16 of an inch on each side, torn completely through.

The female organ consists of two labium majora. It is large lips on the outside. Just within these are the labia minora, which are smaller lips, and then inside of those is the hymen. The part to which I referred as posterior, the back lower part of the vagina, is outside the hymen but inside the labia minora, between the hymen and the labia minora. There is no other part of the female organ between the labia majora and the hymen that I haven't mentioned, not directly in front of it.

Q. I want you to tell the jury, with reference to the age of these, what the age of these tears were, that you have described?

[fol. 63] A. Well, they were still—of course, I couldn't tell exactly, but they were still—

Objection—overruled—defendant, in apt time, excepts—Exception No. 5.

A. I couldn't tell the exact date, but the tears were still fresh and raw, which indicated that they were recent.

Q. In your medical opinion, what would you say the age of them was?

Objection—overruled—defendant, in apt time, excepts—Exception No. 6.

A. Well, that is a little hard to say.

Q. Well, approximately—your best opinion about it, Doctor?

A. Well, I'd say they couldn't have been over ten days.

Q. Do you have an opinion, satisfactory to yourself, as to whether the female organ of Betty Jane Clifton had been penetrated, sir?

Objection—overruled—defendant, in apt time, excepts —Exception No. 7.

A. Yes, sir.

Q. What is your opinion?

A. My opinion is that it had been.

Betty Jane Clifton remained in the hospital until August 10th. At no time in my examination of her has Betty Jane Clifton had any recollection as to what has happened to her. I have an opinion, satisfactory to myself, as to whether Betty Jane Clifton, after suffering the wound and injuries that I have described and having remained in the condition that I have described she remained in there for the period between the 16th day of June 1950, and the 10th day of August 1950, would have any recollection or memory as to what happened to her; [fol. 64] in my opinion, she does not; I would like to say, that she was not in the state of unconsciousness until August 10th. On the 12th of July she sat up in bed and opened her eyes, and on the 14th she began to talk. My opinion would be that she would not have any recollection after suffering that period of unconsciousness and those wounds.

The hymenal ring is a ring of tissue just inside the inner lips of the female external organs, separating them from the vagina, which is the internal. It is commonly known as the maidenhead. That hymenal ring has an opening, but not in all cases. In this case the hymen was perfectly normal, except for the two tears in it, which would allow two fingers to enter into the vagina. I found no old tears of any kind.

Cross-examination.

The examination of the female organs took place on the 23rd or 24th of June. Up to that time I had made

no examination of the private parts of Miss Clifton. It is customary for a physician to make a record of his examinations, progress notes, and so forth, on the hospital record. I made them in this case. I don't know that I wrote a progress note every day, but we probably wrote orders every day.

I have a large enough practice. My "astounding memory about every detail of that examination in my treatment of Miss Clifton, without reference to some notes," is due to the fact that this was not the usual run of case that you have. You don't see these once every two or three years, and naturally you'd remember about it.

Q. Well, usual or unusual, Doctor, isn't it one of the cardinal practices or principles in the practice of medicine in the treatment of a case where even there is a hint or suspicion that there has been rape, that you make detailed records and reports of it?

[fol. 65] Objection—sustained—defendant, in apt time, excepts—Exception No. 8.

We do usually make notes of all those cases, and I made notes of this case. Those notes are not here in the Courtroom to my knowledge; I don't know that they are. (The Solicitor handed defense counsel two batches of papers). These are the nurses' notes which you hand me. There is more or less a compilation of the progress notes and doctor's orders that I gave in this case. Among these notes and orders there will be found not only diagnoses, but treatment records. I also have in there notes as to what I found on the 24th of June. Those records are made up by a number of people. The admitting office made the front sheet, the typewritten part on it, and then that is taken back to the room with the patient. The nurse adds these other pieces of paper, temperature chart, progress notes, history, and so forth. In this case the resident wrote that admitting note counsel is referring to. All of these records do not purport to be doctors' reports; these are (indicating), and they are signed by the physician who made the examination or ordered the treatment in the case. There was no rearrangement of that file to my knowledge. I had it in my possession. There was no rearrangement of that file by me and no rewriting of any

portions of the record. The Record Room would have that. The nurses' records are made up on separate sheets altogether. They would form no part of the progress notes of the physician and the physician's orders. Those are physicians' orders and progress notes of Dr. Dale, Dr. Pearlman, me, and other physicians who treated and prescribed in this case. The nurse keeps the temperature sheet. Aside from the temperature sheet and other minor notations, the nurse doesn't do anything with those notes made by the physician except to check when she has followed the orders of the physician.

The first sheet is made out in the admitting office when the patient comes in, first. (Two batches of paper writ- [fol. 66] ings were marked: "Defendant's Exhibit No. 1 for identification", and "Defendant's Exhibit No. 2 for identification.") The entry that is made here (indicating) in the hospital record was made on the 24th day of June 1950, by me, and it is dated the 24th day of June. I was not present when Dr. Dale made an entry. I was not present when Dr. Pearlman made an examination. Dr. Odom took care of Miss Clifton while I was away over the 4th of July; Dr. Jeffreys saw her several times, and Dr. Blair fixed her jaw. I doubt that their notes are in there. Dr. Blair has some notes, I think, but I don't believe Dr. Jeffreys made any or Dr. Odom, either. They did not make any progress notes whatever.

I testified to finding two tears in the hymenal ring, at 7 o'clock and 3 o'clock. I don't know what caused the tears. I can't say "yes" and I can't say "no" to whether it isn't unusual to find a tear in the hymenal ring. The Solicitor asked if it was always completely covered; it is not, no; very rarely it completely covers the vagina. It is an opening with a thin piece of tissue, in this case 1/16 of an inch wide, entirely around the vaginal opening. I can't agree that it doesn't take any great force or that it takes very little pressure to tear or rupture the hymen; sometimes it does and sometimes it does not. I don't know in this case whether it did or not.

The hymen is very easily ruptured, as a rule. There are many different kinds of hymens. One kind is simply, as it was in this case, a small band encircling the vagina; about

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1/16 of an inch wide. I don't know the exact names of them.

Q. Is that the one they call the crescentric?

A. I don't know the exact names.

Q. It is already open, so you couldn't tell whether it ever covered it or is just like that from nature? Isn't that right?

[fol. 67] A. I have never seen one.

Q. You have never heard of a crescentric?

A. How do you spell it?

Q. C-r-e-s-c-r-e-n-t-r-i-c. Crossen is a recognized authority on that, isn't he?

A. I don't admit anybody as an authority in this but me.

Q. Did you ever study Crossen?

A. I don't think so.

There is an imperforate hymen, which is a piece of tissue that entirely covers the vagina, with no opening in it at all, and then they have others that have very small openings in them, possibly 1/8 of an inch. I can't recall right now the medical terms for all of them. I can't remember any more right now. I don't believe I can describe, for the benefit of the Court, the crescentric hymen. "Crescentric" means crescent-shaped, in which case it would seem to me there would be just a crescent of tissue there, as a hymen, separating the vagina from the exterior. It would suggest to me it has an opening. I am not familiar with that type. There could be such a type, I suppose. The hymen is neither opened nor closed; it is just a ring. It either covers or doesn't cover the vagina, and if it doesn't cover the vagina, it has an opening in it, and if it completely covers the vagina, it is a closed drum-shaped affair, like the head of a drum.

In this case, the patient had a ring of tissue approximately 1/16 of an inch wide, completely encircling the vaginal opening. Betty Jane Clifton is about 17 years of age. I testified that I was able to insert two fingers in her vagina. That is very unusual in the case of a 17-year old girl; I think that is very unusual; in the greater per cent [fol. 68] of the cases, you cannot insert two fingers in the

vagina; I have an explanation and opinion about that in this case.

I have seen Betty Jane Clifton one time professionally since she left the hospital. I do not know what caused the laceration I spoke about finding at the juncture of the labia.

The first time I saw Miss Clifton was about 5 o'clock P. M. on June 16th. I did not make my vaginal examination until the 24th, seven days later. I waited until then because an examination had already been made, and I didn't see any point in doing that when she was in such terrible condition. It wouldn't have helped her condition any for me to have examined her that way. I did not make the other examination, but it was on the record. I was the physician in charge of this case. I was concerned about doing everything I could and finding out all I could about the case. I did not prefer to rely upon the other examination. I was asked to make an examination on the 24th of June by Mr. Daughety, the Superintendent of the Hospital. I don't know why he asked me to make it. That is not the only reason I had for making the examination on the 24th; I would have made one anyway. I was relying on the examination that had already been made. I knew at that time that Dr. Dale had made the other examination, and I relied on that examination up until the 24th of June. Then I was requested by Mr. Daughety, the Director over at the Hospital, to make a vaginal examination, and that is why I made it.

Miss Clifton regained consciousness July 12th, and she left the hospital on the 10th of August.

When I gave Miss Clifton the vaginal examination on June 24, 1950, I prescribed no treatment whatever connected with that. It isn't customary to prescribe some kind of treatment where you find any condition at all, and I [fol. 69] didn't do it. Dr. Dale did not prescribe anything for this particular thing we are talking about now. I don't think it will show in the record that he prescribed something.

Re-direct examination.

The only doctors I have any knowledge of seeing Miss Clifton were Dr. Dale, Dr. Blair, Dr. Jeffreys, Dr. Pearlman, Dr. Odom, and I, and Dr. Andrews, who saw her one time on account of a bladder infection. Dr. Andrews is a kidney specialist. Dr. Jeffreys is a brain specialist. Dr. Blair is a dental surgeon. I have no idea where Dr. Pearlman is now. Dr. Pearlman was a resident at the hospital at that time; he is not there now; I don't know how long he had been gone from there. Dr. Odom, who cared for Miss Clifton while I was away over the 4th of July, is a practicing physician here in town, but he had nothing to do with the case except to assist me while I was away on my vacation.

In this instance, Miss Clifton had, rather than a closed hymen, a hymenal ring, which is the normal sort of thing in a female. To have a hymen entirely closed is more or less an abnormal thing. The hymenal ring is a tissue within the lips of the female organ. If an object greater than the size of that hymenal ring is inserted into that hymenal ring or pressure brought upon it, it will usually break.

Q. If an object of lesser size than that hymenal ring was inserted, what would be the natural reaction?

Objection—overruled—defendant in apt time excepts—Exception No. 9.

A. There wouldn't be any reaction, provided it went directly through the center of the opening.

You could not have a tear of the hymenal ring without exertion of some force.

[fol. 70] Q. You spoke of not prescribing treatment for these tears that were present the 24th of June. You say that is customary, not to make any prescription?

A. Well, it depends upon the case, of course. I mean, it depends upon the laceration and how they were doing. At the time that I saw her, they were healing all right.

One of those groups of sheets constitutes the nurses' records at the City Memorial Hospital during Miss Clifton's stay there, and the other group of sheets constitutes the doctors' records during Miss Clifton's stay there.

Combined, they constitute the record of Miss Clifton, her medical record, at the City Memorial Hospital during her stay there. Her complete medical record cannot be read without the use of both of them. The sheet referred to here was already made at the time I took the patient in charge, the typewritten part was.

DR. F. P. DALE testified: My name is Dr. F. P. Dale. On the 16th day of June of this year I was working at the City Memorial Hospital as Assistant Resident in Surgery. Dr. Pearlman was also there at that time, in the capacity of Assistant Resident in Surgery. He was not assistant to me at that time. I am now Resident in Surgery at the City Hospital; on the 16th of June I was Assistant Resident in Surgery. At this time Dr. Pearlman is a practicing physician at Leaksville.

I got my academic education at Temple University. I got my B. S. Degree at Wake Forest, and did my medical work at Temple University Medical School, graduating from there with an M. D. Degree. At this time I am admitted to the practice of medicine in North Carolina and Pennsylvania. (Dr. Dale was admitted by defendant's counsel to be a medical expert, and so found by the Court). [fol. 71] I was on duty at the City Memorial Hospital on the 16th day of June of this year, and I saw Betty Jane Clifton on that day around 12:35 to 12:40 in the Emergency Room at the City Hospital. She was in a state of shock on admission; her blood pressure was below normal limits; she had severe contusions and both eyes were swollen to the point that it was impossible to see the contents beyond the lid of the eye; she had marked lacerations of both ears and a marked laceration of the left side of the scalp, extending about 4 inches, and she was thrashing, in a semi-conscious state, and she had other bruises over her body which could be seen easily superficially. It was obvious that she had a broken jaw, and it was also obvious that she was suffering internal cranial injuries, and she had suffered loss of blood.

Approximately three and a half to four hours after her admission, rather, arrival at the hospital, I made an exami-

nation or observation of Betty Jane Clifton in the region of her female organ. At that time I noticed she had several bruises around the thigh and on the inside of the legs and also there was bright red blood coming from the posterior portion of the vagina, which was traced to a small laceration at the posterior hymenal ring extended out onto the labia, which is the skin. I examined her there just to the extent of observation. I did not probe her female organ. I just made the observation of where the blood was coming from, and it was coming from the posterior portion of the hymenal ring; it was fresh, red blood. There were bruises about her hips and on the insides of her legs; there were no lacerations observed by me there.

I have an opinion satisfactory to myself as to whether Miss Betty Jane Clifton's femal- organ had been penetrated or not; my opinion is she had. I did not make further examination at the time because it was considered unnecessary and not relevant to the case, her condition was [fol. 72] such that it was not satisfactory to proceed further.

Cross-examination.

I see quite a few patients over at the hospital. At that time there were two other assistant resident surgeons. I did not have charge of the Emergency Room and was not working in the Emergency Room at that time; I was just called to the Emergency Room.

I made a record of my diagnosis and orders in regard to this patient, after she was admitted to the hospital. Despite the fact that I have seen a lot of patients since that time, I feel competent to testify to what I found in this patient, as accurate as my memory permits me, without reference to my notes.

On that occasion, that examination, I found abrasions, no lacerations, and I found them on the inside of the legs. To the best of my recollection I made a note of that. I don't know whether that particular thing was included or not, but I made a note.

Q. In a case that important, wouldn't you make a note of everything you found in the patient?

Objection—sustained—defendant, in apt time, excepts—Exception No. 10.

I made a note of everything I found and considered significant. I didn't say whether I made it or not; to the best of my recollection, I did. I would have to refer to the notes to be absolutely sure. We are not afraid of these notes.

I did not make any other internal examination of her. We took a smear, which is routine for all cases of this type. When we took the smear, we were looking for male sperma. We did not find any. I recorded that in my notes. I did not examine all around the vulva; just one area. I made a complete examination to determine whether there was male sperm present, and I did not find any.

[fol. 73] I did not say I found a laceration on the inside of the legs. I say she had bruises on the inside of her legs. To the best of my recollection, I did make a notation of that in my record. (After examining the record): It is not written "inside of the leg." I made up those notes after her admission to the hospital, shortly after it. That is my record, on the second page. The page to which counsel refers is the final summary. That was attached to the sheets on admission to the hospital. The file grows both ways, from the back to the front and from the front to the back. In this case it grew both ways. The sheet to which counsel refers is the admission sheet; that was made at the time the patient was admitted into the hospital.

The second sheet, which is my report, June 16, 1950, is not necessarily the next thing that happened. They are the first notes I made, and they were made on the 16th. Those notes and pages are all kept together. I cannot explain why the first page appears shopworn and has a very visible oil spot on it right in the center and the spot does not appear on the second pages that were made by me on the day of entry of the patient and does not appear again until you get back into the record to the blood count sheets. I see that oil spot back in there again. I do not know how to account for that. The only opinion I have about why these pages are worn and the pages I made out are fresh, is that mine are covered up. I did not find some worn pages back inside of the record; I have not examined it.

(At request of counsel, the witness turned through the papers to the blood count records). There is not anything more than I would expect on any other chart; there is nothing unusual about that report, the way I see it. I don't see anything unusual about those sheets, nothing different in the sheets (referring to other sheets in the batch of papers). It would be my opinion that they were all made [fol. 74] in the usual course of things. When I examined her in the Emergency Room I noted that there were abrasions and bruises of the iliac crest. The iliac crest extends over a distance of about 6 or 7 inches, somewhere in the hip region. I recorded that.

Nobody instructed me to make a second examination. I don't recall that I, at any time, told Dr. Goswick what I found on my examination; he had my note there; I don't recall having told him. Dr. Goswick had access to the chart the entire time since her admission, and that would be the only way he would have to know what I found, unless I told him, and I did not tell him anything, to my recollection. I don't recall whether we talked it over or not. I can't remember whether I had any discussion with Dr. Goswick about it. I would not remember that as well as I would remember the technical details of my examination of this patient.

Re-direct examination.

Q. As a matter of fact, Dr. Dale, whenever a private physician is brought into a case, then the Assistant Residents in Surgery usually step aside and allow him to take over? Isn't that the practice there?

Objection—overruled—defendant, in apt time, excepts—Exception No. 11.

A. Yes, sir.

Q. Is that what you did in this case?

A. Yes, sir.

The front sheet, which counsel has asked me about repeatedly, represents what my findings were on my initial examination. My notes read: "Fracture, mandible, left (sub-condylar); fracture, skull, parietal right posterior; fracture, orbit, left with depression; fracture, zygoma, left;

lacerations multiple, scalp, face and both ears; laceration, hymen.". "Laceration of hymen" was written down there on that sheet.

[fol. 75] R. O. Daugherty testified: I am the Administrator of the City Memorial Hospital. I have served in that capacity since December 1, 1949. As administrator, that record of Betty Jane Clifton, consisting of those two groups of papers, is under my supervision.

The summary or first sheet that is on both groups of papers is the admission record of the patient into the hospital, and the top, that has previously been had; that is typed in the admitting office. The balance of the sheet is filled in by the physician immediately in charge. He describes the condition on the form as short as possible. The record of each patient admitted to the hospital, as well as this case, is assembled through us, and its final form here is dictated on the basis of the American College of Surgeons standardization report.

This record was assembled consistent with the rules and regulations of the American College of Surgeons; the admission sheet first, the professional records, and the laboratory records, and so forth, in chronological order, as prescribed, with the nurses' notes in one group at the end of the record.

During the patient's stay in the hospital, that record is kept with the patient, if there is a private duty nurse in the room with the patient, or at the nurse's desk. In this particular instance, there were private duty nurses on until sometime in the first part of July. I do not recall when it was maintained in the patient's room. I would presume there was a table there with medicines and the records and everything else on it. It goes to our Medical Records Librarian, who assembles it.

Cross-examination.

I am Administrator at the City Memorial Hospital. I am not a physician. Dr. Goswick had instructions from me to make a vaginal examination on the 24th of June. [fol. 76] I gave him those instructions because a part of my

duty is the supervision of the resident staff, and I explained to Dr. Goswick some time prior to his making that examination that I did not know whether the house officers would be present, whether Dr. Dale and Dr. Pearlman would be in the City of Winston-Salem at the time, and that it was his responsibility. In using "at the time," I mean at any time after July 1st, as their terms of office expired on July 1st. Dr. Pearlman is in Leaksville; there was another one, who is in California at the present time, and Dr. Dale stayed on as Resident in Surgery. Dr. Goswick was the attending surgeon in this case and I did not want the responsibility falling on my residents for any medical opinion or anything that comes along. That has been established in periods of time to be customary, that the attending physician is responsible for the care of that patient.

I requested Dr. Goswick—you can call it instructions—to make that examination so that it would relieve the hospital of the responsibility if anything should come about after their term of office expired. Dr. Dale is a resident and not the attending physician on that case. He is a physician, but he is under the supervision of the attending man on a private case. Dr. Dale is now the Resident physician over there, the Resident surgeon. I did not know whether he was going to be there on July 1st or not. I know his term of contract now is through June 30, 1951.

I cannot state exactly when I requested Dr. Goswick to make that report; it was some time prior to the time he made the examination. I have no record on that to which I can refer; I would not ordinarily make a record.

Those records are all made and kept under my supervision. Those particular records pertaining to Miss Clifton were kept under my supervision. Up until 9:30 yesterday morning those were the true and correct records of Betty [fol. 77] Jane Clifton. Those records all the time were kept under my supervision; they were signed out twice to my knowledge, once during the past week by Dr. Goswick, and some two weeks ago by Dr. Dale, I believe. I presume they were signed out for professional purposes; that is the only reason that we release those records for, and when the doctors request those, it is customary to let them have them, on their request. Then the records were subpoenaed

here in Court. Those records have never been out of my supervision.

I know generally what those records contain, not that specific record, but I know what records in general contain. I do not know what that record contains. I have seen parts of that record but not all of it. I could not qualify to say I know what is in the record; I know the content of the record. The last time I saw the content of the record was on Monday, this past Monday, and I believe I saw that record sometime after the discharge of Betty Jane Clifton, which date I cannot state, but in unusual cases of this type, where there is a possibility of litigation, compensation or any other type, it is for me to judge that the required portions of the record are present.

At the time that I requested Dr. Goswick to make the complete physical examination, it was reported to me—by which nurse, I cannot recall—that the record was not complete from the standpoint of the attending physician having made the actual examination. My job is to judge the record quantitatively, not qualitatively; in other words, if there is a note there, that is substantial, so far as I am concerned. I cannot question what the professional portion of that record may be, as long as it is there. There is no obligation on my part to see that the doctor writes a certain thing into a record as to what condition he finds on a patient; I do not make any judgment of quality. I made such judgment and pronouncement in this case and require-
[fol. 78] ment of Dr. Goswick because I have an obligation to my resident staff that in any item of unusual category, the attending physician must not only accept the note of the record, but he must make his own examination. I was informed that that was the case, and so informed Dr. Goswick. I did not verify the information, other than when I called Dr. Goswick he said he had not made one because of circumstances he felt would not be justified to make that examination, and I requested then, at that time, that when one could be made that it should be made in order to relieve the responsibility of our assistant resident.

I had not been instructed by the Police Department of Winston-Salem to get such a record and paper; I am certain of that.

I do not know the date of the month I requested Dr. Goswick to make that report; I presume it was before that date.

BETTY JANE CLIFTON testified: My father is Thomas Clifton. I went to school last year at Reynolds High School. I was in the tenth grade last year and am to be in the eleventh grade this year. I am back in school at this time.

I remember getting up out of the bed and catching the bus on the early morning of June 16, 1950. I was going to the radio shop to look after it. I had been keeping my father's radio shop ever since I got out of school.

I have seen the billfold you hand me; it is mine. (Referring to contents of billfold): This picture here is my cousin; she married my cousin, Billy Clifton; and this is my brother, Douglas; and this is a boy that goes to the same school I do; and this is my library card I got out of the public library so I could check a book out; and this is my girl friend, who went to Reynolds last year but has [fol. 79] changed schools now; and this is my identification card.

On the morning of June 16th when I went to the radio shop, that pocketbook was on the left hand, in the top drawer, where I always kept the change. I placed it there after I got to the radio shop that morning, as I always did.

I remember going up there to the radio shop and sweeping the floor and cleaning up a little bit. Some time that day Mr. Grossman called me to the phone over at the record shop, said I was wanted on the telephone. Daddy had always told me to lock the door, but I just didn't think; I just rushed across the street and picked up the phone, and it sounded like a colored lady.

A. . . . I just rushed across the street and picked up the phone and it sounded like a colored lady, asking if the radio was fixed.

Objection sustained, to what she said.

Q. Someone called you? Anyhow, you were called to the phone and someone said what?

A. She asked if her radio was fixed, a certain radio—I don't remember any names—and I told her I couldn't tell,

I'd have to be over at the radio shop to look on the ticket, you know. You can always tell on the ticket, see if it's fixed. I think she said; "Just let it go," or something.

Q. Said what?

Q. I think she said, "Just let it go." I don't quite remember.

Q. "Just let it go?"

A. Yes, sir.

Q. Then what happened?

A. Well, that is all I remember. I guess I hung the phone up and went on back to the shop.

[fol. 80] I don't remember hanging up the phone, but I guess I did. I don't remember anything that happened that day after I went to the telephone. I don't remember exactly when I waked up in the hospital. I remember when I was there, for I didn't know where I was at, and I happened to look up on the pillow case and saw "City Memorial Hospital," and decided that was where I was at. I thought I had been over there two weeks, and my mother said I had been over there six weeks. I didn't know how I got over there or anything.

I had some cuts on my head that I didn't have when I got up that morning and went to the shop. (Witness turned to let the jury see her condition). The cuts on my ear are some that I had after I waked up in the hospital, and one there in my hairline, which is real long and can be felt but not seen, and one on the other side of my head and under my chin, which is small; there is just one cut above my ear; I don't feel any over on the other side.

This key is the key to daddy's radio shop. I had not seen that key since that day up until it was shown me just then.

My jawbone was broken; it was real huge, but it has gone down a lot; it is still larger than it was when I went to the radio shop that morning.

Cross-examination.

I don't remember anything after I received the telephone call until I woke up in the hospital.

LESTER W. JOHNSON testified: On the day in question I worked there in the garage, where I run a place. My garage faced on Trade St. The Clifton Radio Shop is built right in the corner of my garage; it comes out in it. The back of the Clifton Radio Shop backed up on the left wall [fol. 81] of my garage at the rear; it makes a corner in it, in the side of my garage; they corner at an "L". Mr. Clifton had put in a little fan up there, about a 12-inch opening, a circle, a ventilator that he used in his radio shop. The fan was similar to the ones in the back of the Courtroom, operating on the same principle, taking the air out of my place into his place.

I was there in my garage during the morning of the 16th of June 1950, in and out all the morning. During that morning I heard a woman scream three times, just a loud noise. I started to look through there but Mr. Dunlap beat me to the place, and that was all that I heard except just a radio playing, like usual. I did not look in there, because Mr. Dunlap got up there before I did, to the place to look in.

Q. And he (Mr. Dunlap) saw something?

A. He said he saw something, said the door was closed and they had gone off and left the radio playing. He said he saw the door closed.

Q. And had gone off and left the radio playing? Can you tell the jury what time that was?

A. Well, there was a fellow in there at that time said it was a quarter of 11 and he had to go move his car. That is all I know about the time. He had his car out there on the parking lot; he was standing there, said he had to go move his car, and he said it was a quarter to 11 o'clock.

Objection to what somebody said—sustained.

Q. To refresh your recollection—Was it a quarter of 12, sir?

A. Quarter to 12.

Q. Was it a quarter to 12 or quarter to 11?

A. Quarter to 11.

Q. You don't recall definitely what the hour was?

[fol. 82] A. No, I do not.

Cross-examination.

According to my best recollection, it was a quarter to 11. I did not check the time.

Q. You had some way of fixing that time in your mind?

A. No. There was a fellow there, as it happened. He says, "It's a quarter till 11, and I've got to go move my car."

Q. I am not talking about what he said. In consequence of what he said to you, you fixed in your mind the time of 10:45 or quarter to 11? Is that right?

A. Yes. That happened at the same time he said that.

Q. That is when you say you heard three screams?

A. (The witness nodded his head).

Q. And got up?

A. (The witness nodded his head).

Q. Or started to that ventilator, to get up there, and someone else beat you there, and nothing was seen?

A. Correct.

JOSEPH ISIAH REDMAN testified: On the 16th of June of this year I was working for B. S. Orrell. We cut 250 boxes of bananas that morning till 12 o'clock. At lunch time I carried some laundry up to the Chinese laundry on Trade Street, and after I went to the laundry, it was time for me to go to dinner, I'll say between 12:30 and 1 o'clock, and [fol. 83] I was on my way to dinner, and I was going on out Trade, and then I had to turn to go out Oak Street. I had turned to go out Oak Street and I seen Clyde was going out Oak Street in front of me. When I first saw Clyde he was right along there by that service station. I do not know where the Clifton Radio Shop is. Clyde was right there at the filling station on the corner of Trade and Seventh Streets, the one just across the street from Brown's Warehouse. Clyde was right there on the corner of Oak and Seventh Streets, over on the north side of Seventh Street. When I first saw Clyde I was right along there by the battery place.

Clyde had a small radio. I did not catch up with him there. I hollered and spoke to him. Clyde didn't say anything except asked me for a cigarette and I told him I

didn't have one. I asked him what did he want for the radio.

Q. How did he appear, Isiah, at the time you talked with him there?

Objection overruled and defendant, in apt time, excepts—Exception No. 12.

A. Oh, just like anybody else'd get off from work, going to dinner.

I never did catch up with him; he walked in front of me; I'll say he stayed in front of me a pretty good ways, something like from here to the second bench, something like 30 or 40 feet.

I have been knowing Clyde a pretty good while. Me and him used to work together at the next produce house, of Plemmons and Irvin. He walked on in front of me on out there to Eighth Street, and I stopped out there and was standing there talking to another fellow out there on the street, and he got out on Eighth Street, and he left, and I went to dinner. I wasn't in any hurry; I had a whole hour. I don't know which way he went when I got to 8th Street. I don't know if he stopped there on 8th Street; I can't say; [fol. 84] I went on out Oak; I did not see him any more after I got to 8th Street.

While I was walking there in front of the filling station with Clyde over on the corner, I did not see a pop truck pull up there.

The next time I saw Clyde was when I was going back to work. At that time I saw him down there on the railroad. I went down on Short Abattoir and Oak, to the house of a girl friend, for dinner. I don't know how long I was at her house. When I came back I came by the Winston Leaf House and by the White Sand, and I saw Clyde out there. I also saw Thomas Campbell and Roosevelt Peters there; they were on their way back to work. I didn't stand talk to Clyde at that time. Clyde didn't say nothing to me. I hollered at Clyde, but he didn't look around and say anything to me; he just kept walking. Nothing was said between me and Clyde on the White Sand. Clyde was coming on down like he was going home.

I had eaten lunch at my girl friend's house before I went

to the White Sand. I don't know how far it is from 7th and Trade to the White Sand or from the White Sand to where my girl friend lives.

Cross-examination.

I saw Clyde by the filling station between 12:30 and 1 o'clock. I never leave the place I work 'till 12 o'clock, and sometimes it will be 5 minutes past 12. I had to go by the Chinese laundry, and there were people ahead of me at the laundry. Orrell's place is right in front of the Colonial Store on Fifth and Cherry, and I went down Cherry to Sixth Street and right up Sixth Street there to Trade to the laundry and came on out Trade to Seventh and turned on Seventh, west, to Oak, and that is where I saw Clyde Brown.

I did not get off at 12:30. I say I got off at 12 o'clock. If I get off at 12 I have to be back at 1:00. I got back to [fol. 85] work about a quarter past 1. I didn't know exactly what time it would be when I would get back, but when I got back I looked at the clock at Orrell's. I did not know I wasn't going to be late; I was just taking a chance on that.

I went down to my girl friend's house and ate lunch, took as much time as was necessary to get my lunch, and then I walked on back.

When I saw Clyde Brown on Oak Street it was between 12:30 and 1 o'clock. I didn't stay at my girl's house no longer than it took me to eat dinner; I don't know how long it took me, but it didn't take long; I'll say about 10 or 15 minutes. I walk back to work pretty fast, and it doesn't take me long; it is at least 22 minutes' good walk. It takes me about 22 minutes to walk from her house up to Orrell's store and it takes me about 22 minutes to walk from Orrell's store down to her house, if I go straight there, but if I have to stop, it takes a little longer. I was given an hour for my lunch time. I spent about 44 minutes walking backwards and forth, and I spent about 15 minutes at her home eating.

I saw Clyde Brown that day. He stayed in front of me about a distance of 30 or 40 feet. He was walking north on Oak Street and he just turned his head around.

Re-direct examination.

I got off from work at Orrell's at 12 o'clock and I went to the Chinese laundry. I went up to Brown-Rogers-Dixson Company earlier in the morning, but on this occasion I went to the Chinese laundry right there out from Pleasant's Hardware Store at the corner of Sixth and Trade Streets. I came down to Sixth Street and went up by the City Market, and then I turned down Trade Street to the Chinese laundry. Then after I left the Chinese laundry I walked on North on Trade Street, and when I got along down at Brown's Warehouse I saw Clyde right there at [fol. 86] the service station. Clyde was walking about like a man would going home for lunch, and about the time I got down to the corner he had gotten to the corner of Oak and Seventh Street, and I was over on the corner of Trade and Seventh. Then he walked on down Oak Street, going North, sort of in front of me. He just turned has head. Me and him didn't go out to Eighth Street together.

(Referring to a photograph) I can recognize one building and the church on Liberty Street in that picture, but I don't recognize the other places.

I was paying much attention to the way Clyde was dressed on that occasion and I can't hardly say how he was dressed.

Q. Do you remember what type of clothes he had on at all?

Objection—overruled—defendant, in apt time, excepts—Exception No. 13.

A. Well, he had on, I would say it was a pair of fatigue overalls or a pair of overall pants, something——

Q. Something of the sort?

A. It was something like pants, in the pants line, or something like that.

Q. You are not positive about what he had on?

A. No, sir, I am not.

Q. But that is your best recollection about it?

A. That is right.

Re-cross examination.

I said I didn't recollect what he had on; that is something I don't pay attention to, what people are wearing when I am going home to lunch. I told the Solicitor to my knowledge what he had on. When I am walking, I walk with my head down most of the time, and I didn't pay all [fol. 87] that attention to the way it was. It was between overall fatigues and overall pants; it was in that line; I can't say it was dress pants; I believe they were sort of brown; I don't remember now whether they had cuffs on them or not; it looked like the same color as Army overall fatigues. He had on overalls; the clothes that he had on was brown. I never did get close enough to him to see whether they had big brown stripes or what on them; all I know, they was brown. I don't remember what kind of shirt he had on. If I ain't mistaken, I think he had on a baseball cap; I don't remember now what color. I have told all I know about it. I think he had on a pair of brown slippers. I am not trying to reconstruct nothing in my mind. I remember now he had on a pair of tan slippers. I have told about the kind of pants he had on, to my knowledge, for I didn't pay all that much attention to it; because I thought he was coming from work. I didn't pay all that much attention to it. I noticed his shoes, because if you are walking along with your head down, the first thing you see is a pair of shoes a fellow is wearing. I am not saying that the only thing I saw about the person I identified as Clyde Brown was his shoes. I saw his face. He turned around, turned his head around. I can recall the overalls he had on. He had on a shirt, but I don't remember what color it was; it was in the sport shirt line; I don't know what color it was.

I do remember something about the person I saw that I identify here as being Clyde Brown. I do know that the person I saw was Clyde Brown. I used to work with Clyde and I know him.

I did not say I walked down to Eighth Street with him. I said the time I got to Eighth Street he was gone. I said I stopped out there. I said I walked down Oak Street from Seventh to Eighth going North on Oak Street. That is a

long block. I have worked with Clyde Brown and know him very well. I was walking about 30 feet behind him. [fol. 88] I walked with him out to the next building out there and was stopped and talking to a man out there.

Re-direct examination.

When I saw him on Oak Street, it was Clyde, and the man I saw over on the White Sand was Clyde. Thomas Campbell and Roosevelt Peters were there, too; they were on their way back to work. I knew Thomas and Roosevelt.

I have told what kind of clothes he had on to the best of my recollection.

(At this point in the trial the Noon recess was taken, with the Court instructing the jury as follows: "Gentlemen, remember the caution I have heretofore given you. Don't discuss this case among yourselves or allow anyone to talk to you about it. Wait until you have heard all the evidence, the argument of the counsel, and the charge of the Court before you make up your minds.")

At 1:45 P. M. of the same day the proceedings were continued, as follows:

Roosevelt Peters testified: On the 16th day of June, I was working at Plemmons and Irvin, a wholesale produce establishment on Cherry and Sixth Streets. I knew Tom Campbell on that date. Tom and I both worked down there. Tom and I lived on West 12½ Street at that time. Tom and I went to lunch that day and I saw Clyde Brown on my way back, right there on the White Sand under that lifter they have got down there. I just passed him there and he had a radio in this hand; I asked him to play it and he said it wouldn't play, so we kept going on. At the time I passed him I reckon he was about as far as from here over to that banister from me (7.5 feet). We just slowed down and then moved on. I didn't notice nothing about [fol. 89] his clothing, but he had on a bluish looking shirt and it looked like to me he had on a chauffeur cap.

I go to lunch right along about five or ten minutes of twelve; no fixed time.

Cross-examination.

The White Sand is right off of Cherry St. It is a big yard they have got there where they unload cars and things. You can come up off of Cherry to the place there. From 16th Street you can go across there and hit 12½ Street. I live on 12½ Street.

I got off about five or ten minutes to twelve o'clock and the truck driver down there brought me and Tom Campbell home on the truck. When I saw Clyde it was around about 12:25. I was with Tom Campbell at that time. Tom Campbell is in the courtroom. Tom lives at 345 West 12½ Street. Tom works with me at Plemmons and Irvin's.

The man I saw and who I identify as Clyde Brown had on a chauffeur's cap and a bluish looking short, to my knowings; it was some kind of a little old shirt like the one I have on. (The witness was wearing a sport shirt.) I didn't pay no attention to the pants he was wearing because he was kind of off from me, over in the weeds there. I didn't see his shoes.

It was right along about 12:25 I saw him. I know Clyde Brown. I have known him ever since I have been on 12½ Street, and that has been a good while.

I have never been in no kind of trouble. I have been in Court for not going to school, playing hooky. I have been down there when me and my wife had a little scuffle, when we were fighting; she said I hit her with a chair; I hit her with a chair to keep her off of me. My wife has had me up just one time. I have been up one time for larceny; I didn't get no time for that; I got a beating, got whipped. That is all I can think of I have been up for. I did not say I [fol. 90] had not been up for anything at all. I know there ain't nothing else I have been up for.

Re-direct-examination.

It was pretty close to 12:25 when I saw him. I know I went home at five or ten minutes to twelve.

THOMAS CAMPBELL testified: I know the defendant, Clyde Brown; I have known him around three or four years.

On the 16th of June, of this year, I was working at Plemmons and Irvin's, wholesale food produce, and was living at 345 West 12½ Street. I went to lunch with Roosevelt Peters.

I saw the defendant, Clyde Brown, on the White Sand on my way back to work. I did not stop and talk with him. He had a little hand radio in his hand, a little grey hand radio. I didn't pay no attention to the kind of clothing he was wearing. I estimate that I saw him there about 12:25 or 12:30; I don't know the exact time; I estimate it was between 12:30 and 12:25.

Cross-examination.

I went to lunch on the 15th of June, about 11:55. On the 16th of June I went about 11:50. I have a watch. My watch was broke, wasn't running then. I know it was 11:50 because we have a time clock and I have to punch the clock. The reason I know what I time I got back to work is because we rode home on the truck. The boy that carried us home told us he was going to wait on us 15 minutes, and we were trying to get back down there after we went home and ate. I estimate it was about between 12:25 and 12:30 when we got back down there.

I was riding on a truck going back. We caught the truck right off the White Sand up there. The White Sand is right off of Cherry Street. I estimate the time as 12:25 or 12:30. I have not been doing a lot of talking about this. All I have talked is what I have heard and read in the paper. [fol. 91] I am not making up my mind. They carried me down there for investigation about this, asking me questions about it.

I don't remember what time I went to lunch on the 17th of June or went to lunch and returned to work on the 18th of June. I can't remember the time I went to lunch and returned on the 14th of June. I remember the time I went to lunch and returned on the 16th of June because we had a certain amount of tomatoes to run out, a certain amount of boxes of tomatoes to run out. That was on the 16th or the 15th of June, I am not certain which. That is how I

fix the time, is on the occasion on which I had all those tomatoes to run out. It was on the 16th of June, when I went home that Friday. I just said I am arriving at the date from the fact that I had a lot of tomatoes to run out. I know we were supposed to run them out on Thursday evening; but we didn't finish. I can remember that Monday in connection with going to lunch and coming back to work, the Monday after the 16th. I can't remember the Monday before the 16th. I can't remember what time I left for lunch and what time I returned to work on the 13th of June. I can remember what time I left on the 16th; I don't know what time I got back. I saw the man I identify as Clyde Brown between 12:25 and 12:30.

I haven't agreed to anything with Roosevelt Peters; we know what time we are supposed to get back.

I have been up for gambling, whisky, larceny, and nuisance. I have been up for whisky one time; larceny, once; haven't been up for fighting; gambling, once—up twice, but I served time once. I served 60 days for larceny. I have not been up for fornication and adultery.

Re-direct examination.

We had to run the tomatoes that Friday. It was the day I ran the tomatoes that I saw him on the White Sand.

[fol. 92] M. W. Wilson testified: On the 16th day of June I was working at the Fowler Furniture Company, 609 North Liberty Street. I do not know where the Clifton Radio Shop was on that occasion; I do not know where it is now. Fowler Furniture Company is between the 600 and 700 block on Liberty Street.

I saw the defendant, Clyde Brown, on that day two times. I saw him just before Noon. It was about an hour between the two visits, and the last visit was shortly before 12:00 because we have two employees that go to lunch at 12:00. The first time, Clyde Brown came in with a small portable radio, wanting it to be repaired. He had bought it previously from us, earlier in the year. I do not recall how he was dressed on that occasion.

Those two visits were the only two times I have ever seen him since. On the second visit he came back to pick up his portable, with the statement that he had some one else to repair it. He took the portable with him that time.

W. F. Reid testified: I am a police officer of the City of Winston-Salem, assigned to the Detective Division, and I was serving in that capacity on the 16th day of June of 1950.

A call came into the Station to which I responded sometime around the Noon hour, about 12:25. Pursuant to that call I went to the Clifton Radio Shop on Seventh Street, arriving there about 12:30, or 12:28, or 12:29; I was about two or three minutes getting there.

When I arrived there I saw a crowd around the front, and Officer Combs was trying to handle the crowd and keep them out of the Radio Shop. Officer Combs was standing just inside the door of the shop, keeping everybody out. No one else was in the shop at that time. Betty Jane Clifton had already been removed at that time, and her father was not there. I glanced in the shop and then asked Mr. Combs to keep everybody out, and I hurried on to [fol. 93] the City Hospital. I asked Officer Combs to keep everybody out until other officers arrived.

When I arrived at the Emergency Room at the City Hospital I found in the Emergency Room a young lady on the table in there and Dr. Dale and another doctor of the hospital staff and two or three nurses working with her. I learned that that young lady was Betty Jane Clifton, while I was there. Betty Jane was badly beaten about the head and face and her eyes were completely swollen together and she had a lot of blood in her hair and on her face and on her clothing and she apparently was unconscious at that time. I talked with Dr. Dale before I left the hospital.

Q. What did he (Dr. Dale) tell you, Mr. Reid, with reference to her injuries?

Objection; overruled, and defendant, in apt time excepts —Exception No. 14.

The Court: Gentlemen of the jury, this is offered for the purpose of corroborating Dr. Dale, if you find it does corroborate him, and for that purpose only. It is not substantive testimony.

A. Dr. Dale stated that the girl was in a very serious condition and apparently, in his opinion, was fast slipping. He stated that he was of the opinion at that time she had a fractured skull and that she had a fractured jawbone and that she was very badly beaten and that her condition was very serious at that time.

Q. Did he make any statement to you at that time or at a later time about any vaginal or female organ wound?

A. Yes, sir. I asked Dr. Dale before I left the hospital if the girl had been criminally assaulted.

[fol. 94] Objection; overruled, and defendant, in apt time, excepts—Exception No. 15.

Q. What did he tell you?

A. At that time he stated that at the time she was admitted to the Emergency Room that she was bleeding freely at her private, and that she did have a laceration.

Q. Did have a laceration?

A. Yes, sir, and that her condition, though, was too serious at that time to go any further with that examination.

I stayed at the hospital approximately four hours from the time I arrived there. During the time I was there, one of the nurses, in my presence, took scrapings of the young lady's fingernails and they also took her clothes and it was all sealed up and handed to me and I left there and came back to the Police Station around 4:20 P. M.

Sometime later I saw the defendant Brown in Captain Burke's office at the City Hall. The first time I saw Brown was on the 19th of June, at approximately 4:00 o'clock in the evening, the Monday after I had seen Betty Jane Clifton on Friday in the City Memorial Hospital. Capt. Burke's office is not in the jail; it is on the second floor of City Hall. At the time I walked in the office, Capt. Burke, Mr. Adams, Clyde Brown, and two or three officers were there in the office, and they were talking with Brown when I walked in.

Q. I want you to tell the jury what Brown told you?

Objection.

The Court: Gentlemen of the Jury, you may step out to your room.

(In the absence of the jury the following proceedings were had:)

Mr. Price: If your Honor please, I take it the question [fol. 95] Mr. Johnston is asking is leading up to some statement or confession made by the defendant, some statement that purports to be a confession, and I certainly think that we are entitled to a preliminary examination as to whether it was a voluntary statement or not.

The Court: Absolutely. Go ahead. That is the reason I sent the jury out.

The Solicitor: If your Honor please, I might make this further statement: that this is one of a series of statements.

The Court: Let's go into all of the statements while the jury is out.

The Solicitor: All right, sir.

Mr. Price: How many statements are there, Mr. Solicitor?

The Solicitor: Well, sir, we will go into them in a systematic way.

Mr. Price: All right. Mr. Reid, you say that the first time you saw——

The Solicitor: Now, your Honor, I believe I can qualify him and then permit the counsel to cross-examine him, with your Honor's approval.

The Court: Let him go ahead, and then you can take him back.

The Solicitor: All right, sir.

The Court: Go ahead.

Examination of Mr. Reid by Mr. Price, in the absence of the jury.

The first time I saw Clyde Brown was on Monday, the 19th, around 4:00 o'clock, in Capt. Burke's office. He was [fol. 96] arrested that same day early, around 12:25 or 12:30 that same morning. This was 4:00 o'clock in the afternoon. No, I was not present. That is a record I am quoting. The time he was arrested was registered, but I

was not present when he was arrested. I do not know what was said to the defendant in the way of advising him as to his rights, between 12:30, the time he was taken into custody, and the time I first saw him.

Further examination of Mr. Reid by Solicitor, in the absence of the jury.

On the first occasion I saw Clyde Brown around 4:00 o'clock on Monday afternoon, Capt. Burke was present and Mr. Adams was there, and I recall Capt. Burke telling Clyde on that occasion there that it would be necessary for us to talk with him regarding the assault on Betty Jane Clifton; however, he was not accused of this crime, and that he did not have to make a statement; that due to certain information that he (Capt. Burke) had received, that it was going to be necessary for us to talk with him; that he, Clyde Brown, did not have to say anything; that he was allowed, and would be allowed counsel and the advice of counsel before making any statement. At no time did anyone place Clyde in any fear or threaten him, and at no time was any offer of immunity given to him, or any hope of reward, or any suggestion made to him that he had anything to gain whatever by making a statement. Capt. Burke further advised him that any statement which he might make might be used against him in court, or it might be used for him in court. The next time I talked with Clyde Brown was about 9:30 P. M. the same day, and he was again warned, as he was warned every time I talked to him, by Capt. Burke and other officers. He was told about his right to counsel. He was told that he did not have to make a statement. He was told that any statement he made would be thoroughly checked. He was told that any statement he might make might be used against him or for him [fol. 97] in court. He was also told that he had the right to counsel's advice before making a statement.

He was never placed in any fear in any of the meetings or talks I had with him, nor was he threatened or placed in any compulsion of any sort, and he was never offered any reward or hope of reward, or immunity, or promise or suggestion that he had anything to gain by making any statement. On each occasion I talked with him we were

in the offices of the Detective Division, and most of the time in Captain Burke's office. The Detective Division Offices are not in the jail; they are on the second floor of the City Hall. They are entirely open to the public.

During his (Clyde Brown's) stay there he was allowed visitors. I know that Mattie Mae Mitchell, his girl friend, came to see him. She was allowed to see him each time she came down there while I was on duty, or while Mr. Carter was on duty. Augusta Henry also came to see him. Clyde Brown asked for Augusta Henry, and the Police Department located Augusta Henry and brought him up there. During his (Clyde Brown's) stay in jail, counsel came to see him. Counsel went up in the jail and talked with him, but I don't recall the exact date that counsel talked with Clyde. The longest period of time that he was talked to on any occasion, to my knowledge, was not more than two hours. Yes, any time during the times we were talking to him when he would tell us he would like to stop the conversation, we stopped and respected his request. He was allowed to smoke, and if he asked us to stop the conversation and let him go back to jail, we would take him back. We gave him a cigarette every time he asked for one.

Re-examination of Mr. Reid by Mr. Price, still in absence of the jury.

Yes, Capt. Burke told him that he would have the bene- [fol. 98] fit of counsel. Yes, I heard Captain Burke tell him that the first time I talked to Clyde Brown. This was on the 19th of June, and that was my first occasion to question Clyde at all. No, I know of no effort on the part of Capt. Burke or anyone else to connect him with counsel, other than tell him that he could have the advice of counsel before making a statement if he wanted one. No, he never told me he was not able to have a lawyer. I never heard Clyde say anything about wanting a lawyer at any time. The different times I talked with him, I never heard him say anything about wanting a lawyer.

To my knowledge, no offer was ever made to get Clyde Brown a lawyer, nor was any offer made to phone for whatever lawyer he wanted; but he never did ask for one,

nor did he ever ask us to get one for him. I don't recall whether the first time he ~~talked with a lawyer was after~~ he had been formally charged with this offense or not because I don't recall what day he did talk with his lawyer. I do know I was there in the building when the lawyer came out from up there and talked with him. I do not recall the lawyer's name. He was a colored lawyer. No, he was not questioned from sometime in the afternoon until sometime around 8:00 or 9:00 o'clock at night. He was questioned the first time until about 5:00 o'clock, and then locked back up. And then he was talked with later on around 9:00 or 9:15 that same night.

We only kept him under questioning about an hour, to my knowledge. We were trying to solve this crime. We were talking to Clyde and asking him questions, and he was talking to us and answering our questions, most of them. To the best of my knowledge, we only questioned him one time in a day, except the first day, and that was on June 19. On that occasion, we questioned him for an hour to two hours, not more than two hours either time. Yes, we questioned him again at night. After the first questioning, we went out to check his story, and then we went back and talked to him again. We made a formal [fol. 99] charge against Clyde on June 24. I had not questioned him every day between June 19 and June 24, according to my best knowledge. I questioned him not more than five times from the time he was arrested to the time he was charged. I don't know whether or not Clyde Brown was carried before the Judge of the Municipal Court on July 7, because I was away on my vacation when he was given a hearing in court, but he was not given a hearing before I left for my vacation, and I left for my vacation on July 6th, 5th or 6th. Clyde Brown had been in custody all the time from June 19th until July 6th.

Re-examination of Mr. Reid by Solicitor, still in absence of jury.

When I was in Capt. Burke's office on Monday afternoon, talking with Clyde Brown, Clyde was asked by Capt. Burke about his whereabouts on that night. He stated that he spent the night with Mattie Mitchell, his girl friend,

down on Wilson Street where they lived. He asked him about Thursday night and Friday morning. He said he spent the night with his girl friend, Mattie Mitchell. He also stated that he came downtown about 9:00 o'clock that morning; that he left his home about 9:00 o'clock and came downtown with a small portable radio; said he went in Clifton's Radio Shop on Seventh Street to see about getting the radio repaired; that he was informed there that they did not fix radios in the daytime; that the man fixed radios at night; that he was informed by the white girl that works in there. He stated then he went on over to Fowler's Furniture Store. He stated that the shoes he was wearing on this particular day he bought them brown and had dyed them on Saturday. I don't recall the exact day that he said he bought the shoes, but they were right new. He stated that he usually bought his shoes tan and usually dyed them black. I did not check what he told us, but I was there and heard him questioned, after Captain Burke and other officers did check what he said. That [fol. 100] was later on that night around 9:00 or 9:15 o'clock. Clyde was warned of his rights at that time. He was warned all along of his rights. Yes, he was told what he was being questioned about in the beginning. He was not placed in any fear, or threatened, nor was any offer of any immunity or hope of reward made to him on that occasion.

The Court: Mr. Reid, wsat here ever any physical violence, threat of violence used on this defendant?

A. No, sir. Absolutely not, sir.

The Court: Was he ever physically mistreated in any manner?

A. No, sir. Absolutely not. Not a bit more than he is in this courtroom now; not a bit.

The Court: All right, go ahead.

Q. What did he tell you then, Mr. Reid? What was the conversation on that occasion?

A. Well, practically the same thing that the first statement was. He contended that he didn't stay at home that night, as he stated; that he just stayed up all night and walked around; that he didn't go to bed. Capt. Burke in-

formed him that his investigation revealed, after checking with his story, that he didn't spend the night as he said. After being confronted with those facts, then he stated that he didn't go to bed that night, that he stayed up and just walked around all night.

Mr. Price: If your Honor please, I am a little bit confused. Are you stating, Mr. Reid, what Capt. Burke's investigation revealed, or what the defendant told?

A. I am stating what was said when Captain Burke was questioning Brown; what Brown would say back to him to the questions.

Clyde was next talked to the next day; it was around 3:00 o'clock, I believe. He was talked to on that occasion from one to two hours, but he was not threatened. At that time his girl friend Mattie Mitchell was present in the office. [fol. 101] On that occasion the subject of conversation was the way Clyde Brown claimed that he was dressed. You know, he had told Capt. Burke that he was dressed wearing certain clothing, and that he left her house at 9:00 o'clock; and she was there in the office and stated in his presence that it was not 9:00 o'clock when he left, but around 11:00 o'clock, and that he was not wearing the clothing he said he was wearing, but that he was wearing different clothing. His girl friend was there and confronted him with those facts.

Well, at that time, of course—You don't want to hear his statement that he made at that time? At that time he did change his story then, and stated that he did leave home, as Mattie Mae said, about 11 o'clock, or shortly after, and that he was wearing the clothes that she said he was wearing when he left, and that he was wearing the clothes she said he was wearing when he come back, and that he stated that he did go from the house, that he left on that morning wearing a long-sleeved black wool shirt and an old pair of raggedy overalls; that he went on to his mother's house, on 12½ St., where he changed clothes, and that he went on then to uptown with this little radio; that he went to Clifton's Radio Shop and that the little girl in the radio shop was in there alone when he walked in, and that he asked about getting this little radio fixed, and

of course he was informed by her that they didn't work on radios in the daytime; that her father worked on radios at night, and that as he came out of the door he met a colored man going in the radio shop, and that he went on around to Fowler's Furniture Store, which is around the corner on Liberty Street, and left this little radio to be repaired in there. He stated that he went from there down around the City Market and was gone a short time and went back by the Fowler Furniture Store and picked up this little radio and went back up Liberty Street to 7th Street, and on back by the radio shop, and as he got near the radio shop he stated that he heard a woman scream in the radio [fol. 102] shop; as he got on in front, even with the radio shop, he heard a radio fall on the floor; that he looked in and didn't see anyone, but he kept walking, never did stop; he walked on down to the corner of 7th and Trade Streets; that he stopped there and he got to studying about it, and he stated that something must be wrong in the radio shop; so he turned and went back, and as he started back towards the radio shop, he got about half way from the corner to the door and this same man that he met going in the radio shop came out and started walking, meeting him; that the man walked a few steps towards him and looked up and saw him; that he immediately turned around and walked east on 7th Street to Liberty Street, where he turned north and disappeared north, in the direction of a service station up there; and that he, at that time, he noticed the door being cracked open just a little bit to the radio shop. Clyde stated that he pushed this door on back a little bit and stepped inside; that he heard a groaning and struggling noise at the back of the radio shop; that he thought, he realized that there was something wrong.

He stated that he immediately come out of the radio shop and started walking back west on 7th Street to Oak, and he stated as he was crossing Trade Street on 7th, going in the direction of Oak, why he seen a boy he known as Isaiah, that he worked at Orrell's place, and that he spoke to Isaiah; that Isaiah asked him what he'd take for that radio and offered him $18.00, said, "I'll give you eighteen." He stated he said back to him, "Make it ten." He stated that he kept walking on Oak Street, north, and Isaiah followed

him all the way to Cherry Street, and at that time he turned west on 8th Street and on down to Cherry Street and up across the White Sand and back home, and that Isaiah went straight on out Oak Street.

The next time I talked with Clyde Brown, I recall, was after Capt. Burke read the warrants to Clyde Brown. I [fol. 103] was present when the warrants were read to him. That was on the 24th of June. After Capt. Burke read the warrants, Clyde was again warned of his rights as I have already described. Yes, Mr. Carter warned him of his rights at that time. I was present, Mr. Carter and myself, and after Capt. Burke read these two warrants to Clyde, Capt. Burke left the office and left City Hall. It was around noon on the 24th. Clyde at that time made a statement to Mr. Carter and myself, and told us just what did actually happen.

I talked to him again on Sunday following this. Mattie Mae Mitchell came down to the City Hall and contacted Mr. Carter and myself, and wanted to see Clyde. I don't recall whether we went and got Mattie Mae. Anyhow, she wanted to see him, and we carried her up in the jail and let her see Clyde. We got him out of the jail and over in the kitchen or serving room up there where Mattie Mae and Clyde talked.

Mattie Mae Mitchell said to him during the conversation, "Clyde, where are those clothes you were wearing?" He said back to her, in a low tone of voice, "In the old liquor stash," and wanted to know if she knew where it was, and she shook her head "yes." Yes, that was where the pants were. Now, he first stated before he would tell her where they was, he wanted to know if we would let Mattie Mae herself go to this place and get these pants where he had them hid, and we agreed to let her get them, but we stated that we would have to go with her, and that is when he told her where they were, and she shook her head that she knew.

In consequence of that information, we went with Mattie Mae Mitchell down to his mother's, where the pants were. Now, the pants, of course, Mattie Mae herself, after we arrived down there, we noticed Mattie Mae—we looked around and Mattie Mae had a pair of pants under her arm, walking down between two houses, and we asked Mattie Mae if she

would show us where she got these pants, which she did, [fol. 104] It was next door to his mother's house in the floor of a toilet that was on the back porch, and they were wrapped in old newspaper, and the newspapers were damp, and there were other newspapers in this same trap. They were also damp. These are the same pants that were turned over to the FBI.

We next talked with Brown then on Monday. We were called to the Station. We got a radio message to come to the Station, and after arriving at the Station, Mr. Carter and I learned that Clyde had been asking to talk with us, and that he sent for us two different times; that Sgt. Tillotson, the jailer, came down and delivered the message that he wanted to speak to Mr. Carter and myself. At that time we went up and got Clyde, brought him down to the Detectives' office 213. He was warned all along as to his rights, and that he did not have to make a statement, and we warned him again this time, on Monday, of his rights, and that he did not have to make a statement. As I recall, Mr. Carter warned him, and I know I did on this occasion (Monday). He was in no way threatened, or placed in any fear, or coerced on that occasion; and we did not offer him any immunty, or any reward, or any hope of reward. We also told him that he could have counsel before he made any statement; that he had the right to counsel.

Re-examination of Mr. Reid by Mr. Price, the jury still out:

Q. Mr. Reid, were you present when one of the officers—I forget which one—told the defendant that if he didn't tell the truth about this matter they were going to put his mother in jail? Do you know anything about that?

A. I don't recall a question like that, no.

Q. You were not there? Well, were you present most of the time when he was questioned?

A. Well, most of the time I believe I was.

Q. You were never present when a statement anything like that was made to him, about putting his mother in jail [fol. 105] until he talked?

A. No.

Q. Were you present at any time when one of the officers told him that "we might just as well take this fellow back upstairs and lock him up, because he is not going to tell the truth about this thing," or something like that, "keep him there till he talks"?

A. No, I don't remember any statement like that.

Q. You don't remember anything like that? You say that every time you questioned him that he was warned, advised of his rights, warned that anything he said might be used against him?

A. Yes, sir. He was warned of that during every conversation that I heard with him.

Q. Even down to this last statement that you started to tell about a moment ago?

A. Yes, sir. He was warned of his rights.

Q. And when you and Mr. Carter came back in off the field and went to him in response to summoning from Sgt. Tillotson, you say that you told him on that occasion that whatever he said might be used against him, and that he didn't have to make a statement if he did not want to?

A. Yes, sir.

Q. On that occasion you did?

A. Yes, sir.

Q. Did you go to his mother's home and pick up his mother and carry her down to headquarters one time?

A. No, I don't believe I did.

Q. Well, you know she was down there once?

A. I know I went down there after her once and she was sick in bed. I don't know whether she—I think she was down there probably a time or two.

Q. Were you not present?

A. I won't be sure about that. I don't recall if I was.

Q. Well, wouldn't that sort of stick in your memory, if this boy's mother was down there and you questioned her any? How would you overlook that, Mr. Reid?

[fol. 106] A. I don't recall her being questioned any down there.

Q. But you do recall that she was down there?

A. No, I do not.

Q. Well, did you ever give him any opportunity to see his mother?

A. I went once after his mother, to let him see her, and she was sick in bed, said she couldn't get up, said she couldn't go.

Q. Well, Mr. Reid, when you went after her, or some officer, they carried her down there, didn't they?

A. Well, that I don't know. I wasn't along at the time she was carried down there, that I recall anything about.

Q. You just don't recall ever seeing her down there?

A. I don't recall seeing her down there.

Q. Clyde told you several times he wanted to talk with his mother, didn't he?

A. How is that?

Q. I say Clyde told you several times he wanted to talk with his mother, didn't he?

A. No. No, I don't recall Clyde ever telling me he wanted to talk with his mother, now. He kept wanting to see the Mitchell girl, his girl friend, and then I did make several arrangements for him to see her. I don't recall Clyde ever telling me he wanted to talk to his mother.

Q. Mr. Reid, you never had the Mitchell girl down there to talk with Clyde where Clyde could talk with her privately, did you?

A. Well, not—he could talk with her there in the room, just in the room where, of course, we couldn't go out, you know, and leave. She never did talk with him in jail. She talked with him most of the time in Capt. Burke's office, or one of the offices there, and there was high windows to all of them, to the offices, and the doors were not locked.

Q. You were always present?

A. And there was someone in there all the time that she would talk with him.

Q. And you yourself, you don't recall ever giving Clyde [fol. 107] Brown an opportunity to talk with his mother?

A. No, I don't, myself, because I don't recall Clyde ever telling me he wanted to see his mother.

Mr. Price: I think that is all, if your Honor pleases.

The Solicitor: No further questions.

The Court: Do you have any other testimony you want to offer on this question?

Mr. Price: Yes, sir. I'd like to put the defendant on the stand.

CLYDE BROWN, first duly sworn, testified (in the absence of the jury):

Examination by Mr. Price:

Q. Clyde Brown, you, as the defendant in this case, are being examined, the purpose of this examination is simply to determine the preliminary question of whether or not you were properly advised and warned before you made any statement, if you made any statement to the Police officers. So it will deal only and solely with the time you were confined in the jail. Do you understand that?

A. Yes, sir.

Q. With that in mind, when were you taken into custody?

A. Sunday night.

Q. When were you taken into custody, Clyde?

A. That Sunday night.

Q. That was the Sunday night after the 16th of June? Is that right?

A. Yes, sir.

Q. What time?

A. It must have been about one o'clock or some after one.

Q. One o'clock?

A. Something like that.

Q. Where were you at the time the officers picked you up?

[fol. 108] A. I was down at Mattie's house.

Q. Where is Mattie's house?

A. 1318 Wilson Street.

Q. And you say it was about one o'clock?

A. Yes, sir.

Q. Now, you were carried to Police Headquarters at one o'clock Sunday morning? That would be Monday morning, is that right?

A. Yes, sir.

Q. Did the officers lock you up immediately, carry you up in the jail lock?

A. They carried me upstairs and put me in jail up there.

Q. Were you questioned before you were locked up?

A. No, sir.

Q. When was the first time you were questioned after you were taken into custody?

A. That Monday evening.

Q. Monday evening? About what time?

A. Must have been about 4:30 or 5 o'clock.

Q. About what time?

A. About 4:30 or 5:00 o'clock.

Q. Who was present?

A. I don't know their names.

Q. Do you recognize any of the officers? Was this gentleman here, Mr. Reid, who was on the stand a moment ago, was he present?

A. He came in later.

Q. Was Capt. Burke there, this gentleman sitting here next to the Solicitor?

A. Yes, sir, he was there.

Q. He was there?

A. Yes, sir.

Q. Do you recognize any other officers? Was Mr. Adams present?

A. Yes, sir.

Q. Was Mr. Carter present, the man sitting behind the Solicitor?

A. No, sir, I don't think he was.

Q. You don't recall seeing him? Now, you say that was about 4:00 o'clock in the afternoon?

A. Yes, sir, something like that.

Q. What, if anything, did they say to you? Did they advise you or warn you, advise you as to your rights or [fol. 109] warn you that anything you'd say might be used against you?

A. Not the first time.

Q. They just started asking you questions about it?

A. Yes, sir.

Q. What did they ask you?

A. I asked them—I told them I wanted to go home, and they told me they was going to let me go home, they just wanted to ask me a few questions. So they started asking me a question, about where I was and where I stayed at.

Q. Did you answer their questions for them?

A. Yes, sir, what I could answer.

Q. There was no statement made to you, you say?

A. No, sir, not then.

Q. Was any offer made to you to get a lawyer for you?
A. No, sir.
Q. Did you ask the privilege of the officers to talk to anyone?
A. Mattie. I asked them to talk to Mattie.
Q. You told them you wanted to talk to Mattie?
A. Yes, sir.
Q. When was that?
A. That was after they questioned me about the second time.
Q. About the second time?
A. Yes, sir.
Q. Did the officers at any time tell you that you would have the benefit of counsel or could have the benefit of counsel before making any statement, and that you did not have to make a statement if you didn't want to, and that anything you said might be used against you?
A. They told me that twice.
Q. Told you that on two occasions?
A. Yes, sir.
Q. Before they started questioning you?
A. (The witness nodded his head.)
Q. Now, can you tell us when those occasions were, what dates they were? Was it the second, third or fourth time after you were taken into custody, or after the first questioning, rather?
A. I think it was the second questioning.
[fol. 110] Q. They didn't make any offer to you to provide you with counsel or to apprise you of your rights the first time they questioned you? Is that what you said?
A. No, sir.
Q. Now, what about the second time?
A. They did the second time.
Q. They did the second time?
A. Yes, sir.
Q. Now, what about the third time?
A. No, sir, not—I don't think they asked me the third time.
Q. How many times in all were you questioned?
A. About five or six times.

Q. How long would the officers question you on each occasion?

A. They would carry me down there in the evenings, late over in the evenings, and I'd be there till after dark.

Q. Till after dark. Now Clyde, without going into what you told the officers or anything: On this last occasion, the last time you made a statement to the Police Department, were you warned at that time?

A. Yes, sir.

Q. I am talking about the time that Mr. Reid——

Solicitor: I object, your Honor. He has answered it.

Court: Go ahead.

Q. Were you advised of your rights before you made any statement there?

A. Not before.

Q. Not before you made the statement?

A. No, sir.

Q. You say it was four or five times they questioned you?

A. No, sir, about six or seven, something like that.

Q. Six or seven?

A. Yes, sir.

Q. You had been questioned about how many times before the officers came down and read a warrant to you and told you you were formally charged with certain offenses?

[fol. 111] A. Sir?

Q. About how many times had you been questioned before the officers came down and read a warrant to you and told you that you had been formally charged with the offense, the crime of rape, and assault with intent to kill?

A. About four times.

Q. Four times?

A. Yes, sir.

Q. You had been questioned all four—was that on four separate days?

A. Yes, they was on separate days.

Q. On four occasions, and they were four separate days. Is that it?

A. Yes, sir.

Q. And the first day was on the 19th?

A. (No answer.)

Mr. Price: Go ahead.

Examination of Clyde Brown by Solicitor, jury still out.

Q. Clyde, you were picked up and talked with on Monday afternoon, the first time, weren't you?

A. Yes, sir.

Q. At that time, Capt. Burke, this gentleman right here, and Mr. Reid and Mr. Carter were present? They all were there and talked with you, weren't they?

A. The first time?

Q. Yes, on Monday afternoon?

A. No, sir, not—Mr. Carter wasn't there.

Q. Mr. Carter wasn't there?

A. No, sir.

Q. But you recall Capt. Burke telling you that he was going to find it necessary to ask you some questions about this crime that had been committed up there, didn't he?

A. Yes, sir.

Q. You recall him telling you that he was going to have to check your story? You remember that, don't you?

A. Yes, sir.

Q. And you recall him telling you that you had the right to a lawyer, if you wanted it; that any statement—that you had a right to make a statement, if you wanted to? You remember that, don't you?

[fol. 112] A. No, sir.

Q. You don't remember that?

A. No, sir.

Q. You don't deny that he said it, do you? What?

A. I don't, nothing about no lawyer, I don't.

Q. You don't deny he said it, do you?

A. He didn't say nothing about no lawyer.

Q. What?

A. He didn't say nothing about no lawyer.

Q. You don't say that he didn't tell you repeatedly that you had a right to a lawyer, do you?

A. (No answer.)

Q. How many times do you say during your whole stay down there he told you that you had a right to a lawyer if you wanted one?

A. "Nary'n."

Q. So you deny that he never did tell you that you had a right to an attorney?

A. No, sir.

Q. You did have an attorney down there, didn't you?

A. No, sir.

Q. You never had an attorney?

A. No, sir.

Q. No lawyer ever came to see you in the jail?

A. No, sir, but Lawyer Price.

Q. You remember him telling you on that occasion that he was going to check any statement that you made, don't you?

A. Yes, sir.

Q. You remember telling him that you spent Thursday night, or the night before this crime was committed, at Mattie Mae's house, don't you? You remember telling him that, don't you?

A. Was it first, when they first questioned me?

Q. Not the first question, but that afternoon? Do you remember telling him that you spent the night at Mattie Mae's house?

A. No, sir.

Q. What?

A. No.

Q. What time did you tell him you left the house on that occasion?

A. I don't remember.

Q. What?

A. I don't remember.

[fol. 113] Q. What time did you tell him you came uptown? I am talking about Monday afternoon?

A. I came uptown?

Q. Yes. What time on Monday afternoon, when he talked with you, what time did you tell him you left to come uptown on this Friday, the time this crime happened?

A. About 9:30 or 10:00 o'clock.

Q. Well, you remember he talked with you about an hour or an hour and a half on that occasion, didn't he?

A. Yes, sir.

Q. And then you went back to jail? That is right, isn't it?

A. Yes, sir.

Q. And then he came up there and talked with you again—I mean, brought you back down there in Capt. Burke's office and talked with you that night, didn't he?

A. Yes, sir.

Q. And he talked with you for just a few minutes on that occasion, didn't he, Monday night?

A. About a half an hour.

Q. About a half an hour?

A. Yes, sir.

Q. And you weren't talked with except then, Monday afternoon and Monday night? About what time was it that he came up there Monday night? What time did he talk with you?

A. Monday night?

Q. Yes?

A. They come and got me about dusk, about dusk, something like that.

Q. Came and got you and brought you down in Capt. Burke's office?

A. Yes, sir.

Q. On that afternoon, the first time he talked with you, you told him that you dyed your shoes, didn't you; the first time Capt. Burke talked with you, on Monday afternoon, you told him you dyed your shoes from tan to black, didn't you?

A. Yes, sir.

Q. And he asked you why you dyed your shoes, and you said you always bought your shoes tan and dyed them black, didn't you?

[fol. 114] A. Yes, sir.

Q. Then on Tuesday Mattie Mae came up there, didn't she?

A. No.

Q. When do you say Mattie Mae came up there the first time?

A. On a Wednesday.

Q. Are you sure it was on a Wednesday?

A. I think it was Wednesday there. I am not sure.

Q. She told you, in the presence of these officers, that you didn't spend Thursday night at her home, and you

said you did, didn't you, and she said again that you didn't spend Thursday night at her home, and then you admitted that you hadn't told her the truth about it, didn't you?

A. Yes, sir.

Q. What?

A. Yes, sir.

Q. And she told you that you left the house at 11:00 o'clock, and you told her that you left before nine o'clock, didn't you?

A. Yes, sir.

Q. And she told you again that that wasn't the truth, and then you admitted that that wasn't the truth, that she was right and that you had left the house at 11:00 o'clock, didn't you?

A. Yes, sir.

Q. Then Mattie Mae said she had to leave, and went home that Tuesday afternoon that happened, didn't she?

A. (No answer.)

Q. You all were talking down in Capt. Burke's office?

A. Yes.

Q. After she left, you told Capt. Burke that you did come uptown and that you did go to the Clifton Radio Shop, didn't you?

A. Yes, sir.

Q. And then is when you told them about having seen some man go in the shop as you went up the street and having seen him come out when you came down the street? Isn't that right?

A. Yes, sir.

[fol. 115] Q. And you knew that wasn't the truth, didn't you? You knew that wasn't the truth, didn't you?

A. (No answer.)

Q. What?

A. Sir?

Q. You knew you didn't tell them the truth on that occasion, too, didn't you?

A. No.

Q. You say you didn't tell them the truth on that occasion?

A. I actually seen him.

Q. Oh! You say now you actually seen what?

A. I seen that man come out of that radio shop.

Q. When?

A. The same day it happened. The same day that there happened.

Q. What day are you talking about?

A. June 16th, I reckon.

Q. June 16th?

A. (The witness nodded his head.)

Q. Where were you when you saw him?

A. I was going in and he was coming out.

Q. Well, when you went in, what did you do?

A. Went in there to see about getting my radio fixed.

Q. Well, did you? When you went in who was in there?

A. Nobody but her.

Q. But who?

A. That girl.

Q. The girl? Well, she was all right then when you saw the man come out, wasn't she?

A. Yes.

Q. Well, what did you mean by telling them that you heard some moaning under the desk, table there, and eased the door shut? What did you tell them that for then?

A. I told them a lot of different stories.

Q. You admit that you never told them the truth at any of these preliminary meetings that they had with you? Isn't that right?

A. That is right.

Q. You were deceiving them, first one way and then another, weren't you?

A. That is right.

[fol. 116] Q. You were leading them on every wild goose chase you could lead them on, weren't you?

A. That is right.

Q. And you were never telling them the truth at any time?

A. (No answer.)

Q. And they were being as good to you as they knew how to be, weren't they?

A. (No answer.)

Q. Didn't you have a meal every time mealtime came around?

A. Yes.

Q. Did anybody ever offer to do you any harm in any way, any small way; I am talking about any police officer or anybody in the custody of that jail, offer to do you any small harm during your time down there?

A. You mean hit me, or something like that?

Q. Hit you or do anything?

A. No.

Q. What?

A. No.

Q. They were as good to you as you have ever been treated in your life, weren't they? I am talking about these officers that had you in charge down there?

A. (No answer.)

Q. Throughout your stay in that jail they were as good to you as you have ever been treated in your life, weren't they? Isn't that correct?

A. (No answer.)

Mr. Price: Now, if your Honor please, I think the questioning has gone a little astray. The purpose of these preliminary investigations, if your Honor please, is simply to determine whether or not the confession, if any confession was made, whether it was voluntary or involuntary, and that is the only purpose, and to go into the merits, I can see where, well, it is a fine opportunity for him to parade all the testimony out before the Court.

The Court: He is asking him whether or not he was mistreated in any way. That goes to the voluntariness.

[fol. 117] Mr. Price: I mean all that happened up at the radio shop, and what he told the officers. I don't think that is a proper line of questions.

The Court: Go ahead.

Q. You were treated by these officers and these people that had you in charge as good as you ever have been treated in your life, weren't you? Isn't that correct, Clyde?

A. No.

Q. Well, what do you say that they did that wasn't right, then?

A. (No answer.)

Q. What?

A. One thing that wasn't right?

Q. One thing that wasn't right? Now, you tell us what it was?

A. That is when they had me down there questioning, and Mr. Reid, here, told me, say, "We just as well go down there and put his mother in jail."

Q. Oh, you say they told——

A. That is right.

Q. But, apart from that, everything else was just perfect, you say? Who told you to say that?

A. Who told me to say that?

Q. That is what I asked you?

A. I said what he told, what I heard.

Q. Don't you know that Mr Reid went out there and tried to get your mother to come up there to the jail to see you?

A. That ain't what he said there in that office, though.

Q. When was that that you say anybody said anything about putting your mother in jail?

A. Before that confession took place.

Q. Before what confession took place?

A. (No answer.)

Q. Before what confession took place?

A. (No answer.)

Q. Do you want to answer that?

A. No.

Q. What?

A. No.

Q. You asked that your friend Augusta Henry be brought up there, didn't you?

[fol. 118] A. No.

Q. Well, he is your friend, isn't he?

A. I didn't ask for none of them boys to be brought up there.

Q. Didn't you tell these officers that if they'd go get Augusta Henry that you could prove that you weren't guilty?

A. No.

Q. What did you tell them about that?

A. I told who I seen on my way home that day. I didn't actually see none of them boys.

Q. You didn't see any of these boys?

A. I told you I didn't ask none of them to get up here.

Q. You didn't see any of those boys?

A. I told you I didn't ask none of them to get up here.

Q. Didn't ask any of them to come up?

A. Nope.

Q. Well, Augusta Henry came up because you asked for Augusta?

A. They brought them. I didn't go get them.

Q. Didn't you tell the officers that if you could get Augusta, he could prove where you were?

A. No.

Q. When he came up, he said he saw you and you had a dark substance on your clothes? Isn't that what happened?

A. Yes.

Q. Isn't that exactly what happened there?

A. Yes, they brought him up there.

Q. They gave you cigarettes; they did everything they could to make you comfortable down there, didn't they?

A. Yes.

Q. You told your lawyer that, didn't you?

A. (No answer.)

Q. Didn't you?

A. What is that?

Q. You told your attorney that they did everything they could possibly do to make you comfortable down there, didn't you?

A. Yes, sir.

Q. And you say one lone, isolated incident—Are you [fol. 119] sure you understood what Mr. Reid said?

A. I am positive I understood what he said.

Q. Oh, you are just positive of that?

A. I am positive.

Q. Aside from that, everybody treated you with every bit of courtesy they could, and you say that is the only thing they did wrong at all?

A. That is right.

Q. On Saturday morning Capt. Burke called you down-

stairs and told you he was going to read—wanted to read a warrant to you, didn't he?

A. Yes.

Q. And he read the warrant to you, charging you with this crime?

A. Yes.

Q. What happened after he read this warrant to you? Did he say anything to you besides read the warrant to you?

A. No.

Q. Just read the warrant to you and told you he was charging you with this crime?

A. (The witness nodded his head.)

Q. They carried you back upstairs and put you in jail then, didn't they?

A. No.

Q. What did they do with you?

A. Mr. Reid and Mr. Carter sat down and talked to me.

Q. How long did they talk with you?

A. I don't know—about a half an hour.

Q. What did you tell them on that occasion?

A. (No answer.)

Q. What?

A. (No answer.)

Q. Did you tell them the truth on that occasion?

A. Yes.

Q. You did?

A. Yes.

Q. You told them that you did go in there to rob the girl and took her pocketbook, but you didn't rape her, didn't you?

A. Yes.

Q. And you told them the truth on that occasion?

A. Yes.

[fol. 120] Q. You told them how you beat her, didn't you?

A. Yes.

Q. And that was the truth, wasn't it?

A. Yes.

Q. They didn't in any way threaten you at that time, did they?

A. No.

Q. Didn't mistreat you in any way, did they?

A. No.

Q. They were as nice to you as you have ever been treated in your life, weren't they?

A. (No answer.)

Q. On that occasion they told you and warned you about what your rights were, didn't they?

A. Yes.

Q. They told you then that you had a right to a lawyer and that you didn't have to make any statements, and any statement could be used against you, didn't they?

A. No, sir, they did not say nothing about no lawyer.

Q. Did you mention anything about a lawyer?

A. No.

Q. You didn't even mention it at all?

A. No.

Q. Although they told you they were going to charge you with this crime?

A. Yes.

Q. But they did tell you that any statement you made would be used against you or for you, as the case may be, didn't they?

A. (The witness nodded his head.)

Q. Let's see. On Thursday you told Captain Burke that you had a lawyer, didn't you?

A. No.

Q. What was it you told him about the lawyer?

A. I ain't told him nothing about no lawyer.

Q. You didn't tell Capt. Burke that you had a lawyer, on Thursday?

A. No; sir.

Mr. Price: I'd like to know what Thursday he is referring to?

Q. I am talking about on the Thursday after you were arrested on Monday?

A. No.

[fol. 121] Q. On this Saturday morning you went into detail and explained to them how you had called the girl on the telephone and pretended to be a woman, didn't you?

A. I don't want to say about that.

Q. What?

A. I don't want to talk about that.

Mr. Price: If your Honor please, I think we are still going into the merits of the case. I don't think that is proper, at all.

The Court: He is asking about the statement he made.

Mr. Price: It is a question of whether the statement is voluntary or involuntary; not what the statement contains.

The Court: It is proof of its voluntariness; whether or not the statement is true is some evidence. If he was forced to tell an untruth, then that would have an important bearing, or if he told the truth.

Q. On this Saturday morning you told Mr. Carter and Mr. Reid that you went to the City Market and called this girl to Grossman's Record Shop for the purpose of getting her away from the place, so you could search it, didn't you?

A. Yes.

Q. And that when you called her on the phone, you pretended to be a woman and inquired about a radio, didn't you?

A. Yes.

Q. You told them that you then went to the place and found her in it, didn't you?

A. (No answer.)

Q. Didn't you tell them that? Isn't that correct? Didn't you tell them that on this Saturday morning? Answer the question! Didn't you?

A. Saturday morning?

Q. This Saturday morning when you were talking to [fol. 122] Mr. Carter and Mr. Reid; after you told them that you had called her to the telephone and pretended to be a woman, then you told them you went around to the place, didn't you?

A. Yes, sir.

Q. And you told them that when you went in, when she caught you searching her desk drawer, that she went for the rifle and that you beat her to it? Didn't you tell them that? Isn't that what you told them on Saturday morn-

ing when you were talking with them? Isn't that what you told them, Clyde?

A. (No answer.)

Q. You can answer these questions—What?

A. (No answer.)

Mr. Price: If your Honor please, I hate to interrupt counsel so much, but inasmuch as there has been no ruling on this question up to this point, if his answer to this question amounts to a confession, I don't think he has to give it, and I would object to it and ask your Honor to permit me that privilege.

The Court: Anything he says now is not competent before a jury.

Mr. Price: I understand it isn't.

The Court: This evidence which he is giving now will not go before the jury unless he goes on the stand and repeats it for the jury.

(Examination of Clyde Brown by the Court, in the absence of the Jury).

Q. Clyde, let me ask you a question. From the time you were put in custody on the 19th of June, up until after Mr. Price was employed, came over there to the jail to see you, after you made all the statements you made in this case, were you ever mistreated in any manner by these officers, any of the officers?

A. No.

[fol. 123] Q. Was any violence used or threatened to be used against you?

A. No, sir.

Q. Did anybody hit you or threaten to hit you?

A. No, sir.

Q. Did anybody threaten to do you any physical injury of any kind?

A. No, sir.

Q. Did anybody offer you any reward or hope of reward to make any statement?

A. No, sir.

Q. Did anybody tell you that you'd get out lighter,

they'd try to help you get out lighter if you'd make a statement?

A. No.

Q. And were you, at different times—at least on two occasions, I believe you said—warned that you did not have to make a statement?

A. Yes, sir.

Q. You were warned at least once before you made this final statement? Is that correct?

A. Yes, sir.

Q. At that time you were told that any statements which you might make would be used against you?

A. Yes, sir.

The Court: All right. Do you want to ask him anything else?

Mr. Price: No, sir. That is all.

(Examination of Clyde Brown by the Solicitor continued, without the jury).

Q. Now that is the statement you made on Monday?

A. (No answer).

[fol. 124] Q. On Monday morning you sent for these officers, by Sergeant Tillotson, didn't you?

A. I can't recall that.

Q. What?

A. I can't recall that.

Q. He never did call them?

A. I can't recall that, can't remember sending.

Q. You know Sergeant Tillotson, don't you?

A. Yes, sir.

Q. You told him on Monday morning that you wanted to see Mr. Reid and Mr. Carter, didn't you?

A. Yes, sir.

Q. What?

A. Yes, sir.

Q. And he told you that they weren't in the building and he couldn't get them for you, didn't he?

A. Yes, sir.

Q. And about a half hour later he called you—I mean, you called Sergeant Tillotson again and asked him again to get Mr. Reid and Mr. Carter, didn't you?

A. I don't remember it.

Q. You don't remember asking him but one time?

A. That is all.

Q. Well, some half hour after you asked, he came and got you and told you Mr. Reid and Mr. Carter were downstairs now, didn't he, about a half hour after you asked for them on Monday morning after you were arrested on the previous Monday? Isn't that correct?

A. I don't remember.

Q. What?

A. I can't remember.

Q. Well, you remember going downstairs on Monday morning and talking to Mr. Reid and Mr. Carter, don't [fol. 125] you, in Captain Burke's office?

A. No, sir.

Q. You don't remember talking to these officers?

A. No, sir.

Q. Do you remember saying, the morning that you said to Mr. Carter, "I didn't tell you all the truth and I want to tell it now?" Do you remember doing that, to Mr. Reid and Mr. Carter?

A. I just don't remember.

Q. What?

A. I just don't remember.

Q. That was on Monday, after you were arrested on the previous Monday, and after you had been charged on Saturday? Don't you remember calling for Mr. Reid and Mr. Carter?

A. No.

Q. What?

A. No.

Q. You don't deny you called for them, do you?

A. I don't remember.

Q. What?

A. I don't remember.

Q. You remember telling them where to locate the pocketbook?

A. Yes.

Q. Well, that is the day I am talking about?

A. I don't remember——

Q. You remember the conversation you had on that day?

A. No, sir.

Q. What?

A. No.

Q. Don't you remember telling Mr. Carter and Mr. Reid, "I didn't tell you all the truth, and I want to tell it to you now," on that Monday?

A. No.

Q. You don't even remember having a conversation on that day? You don't deny having it, do you?

A. No, sir.

[fol. 126] Q. What?

A. I don't deny it.

Q. You don't deny it?

A. No.

Q. Well, then, you do remember it?

A. I remember it, but I don't remember all of it.

Q. Oh! You don't remember all of it—You remember having a conversation with them; however, you just don't remember what you told them?

A. I don't remember what was said or what I said.

Q. But you do remember that they told you——

The Solicitor: I won't go into that again, your Honor.

The Court: Clyde, did you ever ask them to get you an attorney, a lawyer?

A. No, sir.

The Court: Never requested it?

A. No, sir.

The Court: Is that all, Mr. Solicitor?

The Solicitor: That is all.

The Court: Do you have any other evidence you want to offer on this question?

Mr. Price: No, sir, no other evidence. I would like to be heard briefly on it.

The Court: Do you want to offer anything further, Mr. Solicitor?

The Solicitor: Yes, sir, I want to offer these other officers.

To the foregoing examination of Clyde Brown, by the Solicitor, in the absence of the Jury, the defendant objects and moves the Court to strike all questions and answers not pertinent to the specific issue as to whether the statement

[fol. 127] or confessions purporting to have been made by the defendant were voluntary or involuntary.

Motion overruled and defendant, in apt time, excepts—Exception No. 16.

Captain W. R. Burke testified, in the absence of the jury, as follows:

Q. You are Capt. W. R. Burke?

A. Yes, sir.

Q. You are head of the Detective Division of the Winston-Salem Police Department and were on the 16th day of June? Is that correct, Captain Burke?

A. That is correct.

Q. Captain, were you present on the afternoon of June 19th, Monday afternoon, when the defendant, Clyde Brown, was first talked with?

A. I was.

Q. I want you to tell the Court if he was in any way placed in any fear, compulsion, under any duress, or in any way offered any reward, immunity, or hope of reward or favor?

A. No, sir, he was not.

Q. I want you to tell his Honor just what you did tell him about his rights?

A. Well, sir, first I might say, in consequence of information, when I left the Station on Sunday afternoon, the 18th, I left two detectives looking for Clyde. When I arrived on duty around 8 o'clock Monday morning, I found on my desk a note telling me that Clyde was in custody. At that time we were receiving a number of calls to be answered, and it was that afternoon around 3 o'clock before I got around to talking to Clyde. At that time I asked, as well as I recall it was Mr. Wooten and Mr. Adams and some of them to go up to the jail and bring Clyde down to my office, which they did. When they brought him in, [fol. 128] I asked him, I said, "Is this Clyde Brown?" He said, "Yes." I asked him where he lived, and he told me. I says, "Well, sit down," says, "Brown, in connection with this crime that happened up here on Friday, we have been talking with a lot of people, and in our investigations we

ave found that it is necessary, we think, to ask you some uestions about the case. This doesn't mean in any way hat you are accused of committing the crime, whatsoever. want to tell you before you go further, that you do not ave to answer any questions that you don't care to answer. ou do not, as well as any other person, have to make any tatement that you don't care to make. Also, you or any ther person who is held for investigation in connection ith any crime, is entitled to counsel. You are entitled o be permitted to talk to any of your people in arranging or counsel; but any statement you or any other person as to make has to be made purely voluntarily. You are ot going to be harmed in any way."

Q. Did you tell him, at that time, that any statement e made was going to be checked?

A. I did. I says, "We want to ask you some questions, nd I want to tell you we are going to check them very arefully." I then began asking him where he was at, here he spent the night on Thursday night; just sat there nd talked in a casual manner. He said he spent the night own at his girl friend's, Mattie Mae Mitchell's, on Wilson treet; said he got up early Friday morning, left there; aid he came uptown, brought a radio to have pawned; hat Mattie Mae was planning to put on a party on Friday ight, and that he had told her he would get the money or her to purchase sandwiches and other things that she as to use in putting on her party; that he got back home— e was gone an hour or so; that he stopped in at the radio hop on Seventh Street; that there was a girl in there; he sked her if they fixed radios; she told him that they idn't fix radios in the daytime but that her father
[Vol. 129] fixed radios at night; if he wanted to leave the adio, she's be glad to have it fixed; he told her, no, he'd ke it somewhere else; then he walked on around to owler's Furniture Store on Liberty Street, and that he ft the radio there; said he walked down Sixth Street to e Market, and was gone for a little bit, and he decided hen he got down to the Market that he'd go back to the rniture store and get the radio, that he wanted to pawn that afternoon, and that the reason he was anxious to t the work done on the radio is that he contended that

it would not play but a little while at the time and he was afraid when he taken it to pawn, it wouldn't play long enough for him to get it pawned; that he went on back and got the radio and went on back home. And then that was his story there. I asked him what kind of clothes he was wearing; says, "I was wearing the same clothes I have got on now," which was the clothes that he has there now, polo shirt and grey pants. I examined his shoes and noticed, in looking at them, I asked him, I says, "Clyde, how long have you had the shoes?" Said he bought the shoes two weeks; bought them just a day or two before that school was out; said he bought the shirt and bought, it was either one or two pair of trousers the same day; said he carried his little sister, who was getting out of the elementary school, he carried her with him downtown and also bought some things for her. The shoes, when I examined them, I asked him why—I says, "Is this the color of the shoes when you bought them?" He says, "No, they were tan." And I asked him when he dyed them. He says he dyed them on Friday evening. I asked him why. Says, well, he didn't know; he always dyed his shoes; that he always bought tan shoes and dyed them black. And that was about the end of the conversation at that time.

Q. In all, how long was he talked with, Captain, on that occasion?

[fol. 180] A. I think, as well as I recall, that was approximately 3:30, when we brought him into the office, and it was around 5 or a little after, might have been 5:30, when he went back up, evidently right about 5 o'clock, because Chief Gold and I left the office right after that and we were down on Trade and Northwest Boulevard at 6:00.

Q. Did you talk with him again that night?

A. Yes, sir, I did.

Q. How long did you talk with him that time?

A. Talked to him, I think it was around 9, probably 9 or 9:30, when we talked to him; talked to him, I'd judge, for about an hour, I think about a quarter till——

Q. Did you in any way threaten him on that occasion?

A. No, sir, we did not.

Q. Offer him any immunity or reward?

A. We did not.

Q. Place him in any fear?

A. We did not. After leaving him, Chief Gold and I, we went down and talked with Mattie Mae Mitchell, talked with Clyde's mother, talked with his sister, and——

The Court: Mr. Solicitor, let's don't go back into what he said. Let's take up the various times and see what happened.

The Solicitor: All right, sir.

Q. Captain, how many different meetings were you present, or what times did you talk with Clyde Brown? Don't tell what he said; just tell us the times that you talked with him?

A. I talked with him on the two occasions on Monday evening. I talked with him on Tuesday; I think twice on Tuesday, just a short while at the time. On Tuesday I talked with him a right good while. I talked with him in the presence of Mattie Mae Mitchell, and I am not—I won't be positive, but I think his mother, either his mother or sister was in the office with her at that time, and [fol. 131] then I talked with him on Wednesday afternoon, and I talked with him on Thursday, and I think on Thursday I talked with him—well, I didn't exactly talk with him—that is when we brought in Peters, Campbell, Brown, and they made some statements in his presence. I asked him if there was anything he wanted to ask them; that is about all; I didn't ask him anything, didn't talk with him at length that time. On Thursday afternoon is the last time I talked with him until Saturday morning.

Q. Did he at any time suggest to you that he wanted counsel?

A. No, sir, he did not.

Q. Did he at any time suggest to you anything about having counsel?

A. On Thursday afternoon he stated this: He says—The reason that I remember, it was a lawyer, I thought he says, "If my Lord finds out," and I asked him the second time—the other officers, they understood him to say, "lawyer." I says, "What did you say, 'Lord' or 'lawyer?'" He says, "If my lawyer does what he is supposed to, I will get out." I then asked him if he had a lawyer,—I don't recall asking him who it was. He said he

did, and I asked him if his lawyer had been up to see him. He said he hadn't. I says, "Well, have you called him?" I says, "Why is it he hasn't been up to see you if you have got a lawyer?" And that is the last time I ever mentioned that. I haven't mentioned lawyer or he hasn't mentioned lawyer.

Q. Was he ever mistreated during the time you talked with him or during the time he was down there?

A. No, sir. I was never on the jail floor when he was up there, but he was talked to every time on the second floor, in a public office.

The Solicitor: Examine him.

[fol. 132] Examination of Captain Burke by Mr. Price—(Jury still out):

Q. Captain Burke, the first time you questioned him from 3:30 to about 5:30?

A. I'd judge it was approximately 3:30 when the officers went upstairs to bring him down to the office, and it was approximately 5 or a little after—might have been 5:30—when we put him back.

Q. And then you questioned him again that same day?

A. Later on that night, approximately 9——

Q. That was on the 19th?

A. That was.

Q. How long did you question him that evening, that night?

A. The second time?

Q. Yes, sir?

A. I'd say about an hour or hour and a half.

Q. About an hour?

A. Probably an hour and a half.

Q. Now, on each of these occasions that you talked to Clyde Brown, Captain Burke, you talked to him from an hour to an hour and a half or two hours—isn't that right?

A. Not every time. The first two occasions, on Monday afternoon and then a second time, later on on Monday afternoon, and then on Tuesday afternoon, I'd judge I talked with him a couple of hours, and then from then on, all the times I saw him was probably anywhere from 10 to 15 to 20 minutes, and on Thursday evening I talked with

him approximately an hour, and then I didn't see him until Saturday morning.

Q. Those are the occasions you are referring to, they were regular Police questioning? I mean, you were not just talking to him, no social conversation, you were questioning him about this crime?

[fol. 133] A. We were questioning him in connection with this crime.

Q. Despite the fact you warned him of his rights and told him he could have the benefit of counsel and all that, you did question him for from one to two hours on each occasion?

A. I'd judge we talked to him—I talked to him on two occasions at least for two hours. Now during that time I was interrupted once or twice, telephone ringing and people coming in and out of the office, but I'd say he was in the office as long as two hours.

Mr. Price: That is all,

The Court: Is there any other evidence for the defendant on this question?

Mr. Price: No, sir.

The Court: It appearing to the Court from the foregoing testimony that the defendant was not denied the right to employ counsel; that he was warned that any statement which he might make could be used against him, and that he was not required to make any statement; and if further appearing to the Court that the defendant was not in any manner physically mistreated, threatened or otherwise coerced; and it further appearing to the Court that the defendant was not offered any reward, hope of reward, promised any immunity or hope of immunity for making said statements;—

The Court, therefore, finds as a fact that said statements were freely and voluntarily given and are competent.

To the Court's ruling the defendant, in apt time, excepts —Exception No. 17.

(At this point in the trial the jury returned to the Court-room).

[fol. 134] (Trial continued in the presence of the jury):

P. G. DUNCAN testified: (Mr. Duncan's testimony was offered out of order, with the Court's permission).

I live at 1305 South Thomas Street, in Arlington, Va. I am a special agent of the Federal Bureau of Investigation, and I am assigned to the F. B. I. Laboratory in Washington, D. C. In the laboratory my duties consist of the analysis of blood and other body fluids, the examination and comparison of hairs and fibres. I lecture on blood examinations before training schools, and I also write and collaborate on writing articles on blood examinations and criminal investigations. I have been with the F. B. I. Laboratory since March 1942. I have never kept any specific figure on the number of blood examinations I have made, but I have made thousands of such examinations on evidence submitted to the F. B. I. from law enforcement agencies all over the country. I have a Bachelor of Science degree in Chemistry from the University of Illinois, and on entering the F. B. I. Laboratory I was given special training in the fields that I mentioned. (Defense counsel admitted Mr. Duncan to be an expert in blood analysis, and the Court so found).

(The witness was handed a cellophane package containing a garment): This package and its contents, that is, the garment itself, was received by me and the F. B. I. I was requested to make an examination of the trousers to ascertain whether or not there was any blood present on the trousers, and I made such an examination.

In examining this pair of trousers, I found that on the front of the trousers and on both legs there were a number of spots and also smears of red material. I made a microscopic examination of those red smears and spots and I [fol. 135] made chemical examination of them and I also made a serological examination of them, and I found, as the result of those tests, that those red spots and smears on the legs of this garment consist of human blood; it was not present in a quantity sufficient to type it; in other words, they were small spots and smears, and I found that the

amount of material, while definitely sufficient to ascertain that it consisted of human blood, was not present in sufficient quantity to make grouping or typing tests to ascertain the blood group of the person from whom the blood came. (The trousers were marked for identification as "State's Exhibit No. 1".)

Cross-examination.

I received the trousers on the 3rd of July of this year and made my tests on the 5th of July of this year. I reported my findings to the Police Department of Winston-Salem. There was a report directly to Chief of Police Gold here in Winston-Salem.

W. F. Reid, having been previously sworn, was recalled by the State, and testified: My name is W. F. Reid.

Q. Mr. Reid, I had asked you what statements the defendant, Clyde Brown, made to you on Monday afternoon. Please state to the jury what statement it was he made to you on that Monday afternoon when you talked with him at approximately 3:30 in the afternoon?

Objection—overruled—and defendant, in apt time, excepts—Exception No. 18.

A. I was sitting in the office, Captain Burke's office with Captain Burke, Clyde Brown, and I believe, Mr. Adams, and Captain Burke asked Clyde about where he spent the night on Thursday night. Clyde stated that he spent the night with his girl friend, Mattie Mae Mitchell, on Wilson [fol. 136] Street, where they lived; that he got up the next morning, came down town about 9 o'clock, and brought with him his small portable radio; that he went to the Clifton Radio Shop on Seventh Street, went in and talked with a girl that was there, asked to get his radio fixed and was informed by her that they didn't fix radios in the daytime, that her father fixed them at night; that he did not leave the radio and went on around to Fowler's Furniture Store on Liberty Street; that he went in there and talked with them regarding the radio and getting it fixed; that he

innocent." Captain Burke said to Clyde, "What do you mean, Clyde, by proving yourself innocent? Do you mean that you know who committed this crime or know something about it?" Clyde stated at that time that Mattie Mae was telling the truth about the time he left home; that he left home shortly after 11 o'clock; that he did come uptown with his radio and that he went to Clifton's Radio Shop shortly after 11 o'clock with this radio, the little girl was there, and he asked about getting the radio worked on and was informed by her that they didn't work on radios in the daytime, that her father worked on radios at night; and he stated that the little girl there asked if he wanted to leave the radio; that he told her, no, that he wouldn't leave it, and he came out, and as he came out the door he met a colored man going in; so he went on around to Fowler's Furniture Store; that he went in Fowler's Furniture Store, talked with the men in there regarding getting his radio fixed; that they called someone there in Fowler's about repairing his radio, and that he left it there at that [fol. 138] time; that he went down to the City Market and was gone a short while, and that he decided to go back by Fowler's and get his radio, which he did, and that he got his radio and started back home, and as he got near this Clifton's Radio Shop he heard a woman scream in the radio shop, and as he got in front of it, a radio fell, and that he looked in but he didn't see nobody as he walked on by; that he walked on West on Seventh Street to Trade Street; that he stopped and studied a moment and thought to himself, "There must be something wrong there;" so he turned around and went back or started back to the radio shop; that he got about half way back to the radio shop and this same colored man came out of the door and started walking, meeting him on Seventh Street, and that he walked a short ways and when he looked up and saw him he immediately turned around and went East on Seventh Street, in the opposite direction; that he walked to Liberty Street and then turned north and disappeared out of his sight. Clyde stated that he then noticed the door to the radio shop being cracked a little, partly open; he stated that he pushed the door open far enough to step inside; that when he stepped inside he heard someone groaning behind the

did leave his radio there at Fowler's; that he walked off down about the City Market, was gone a short time and went back to Fowler's and got the radio and went back home.

I was present when Clyde Brown was talked to again that night along about 9:15. On that occasion Captain Burke informed Clyde that his story had been checked, his statement had been checked, and that his statement did not correspond with other people whom he had mentioned, and that his statement regarding his clothing that he was wearing at the time and the time that he left home definitely did not correspond with other folks that he had mentioned. Clyde contended that that was about true, as far as he could arrive at it at that time, that night. On Monday night I think Clyde was kept there in the office probably an hour, maybe an hour and a half, to the best of my knowledge.

On Tuesday, Mattie Mae Mitchell, Captain Burke and myself, and I don't recall who all else, was in the office, in Captain Burke's office. Clyde Brown was there. I don't recall whether Mattie Mae's sister or her mother—I don't recall whether either one of them was there or not, but I know Mattie Mae Mitchell was there. Mattie Mae Mitchell told Clyde, in the presence of us there in Captain Burke's office, that he did not leave her home at around 9 o'clock, as [fol. 137] he stated; that he knew it was 11 or after when he left. She also stated that he did not leave her home wearing a sport shirt and trousers; that he left her home wearing an old black wool shirt and ragged overalls; and that he returned wearing the same clothes about 12:30 or a quarter to 1. She stated that he did not spend the night there on Thursday night, as he had stated, and that he knew that he didn't.

Immediately after Mattie Mae left the office, Clyde stated that Mattie Mae was telling the truth about the time he left there and what he was wearing; he stated that Mattie Mae was telling the truth about him spending Thursday night at her house, that he did not spend the night there, he walked around the streets all night and never did go to bed. After Mattie Mae left the office Clyde said, "May I ask a question?" Captain Burke told him he could. Clyde said, "If you will give me until tomorrow night, I'll prove myself

counter, back behind the counter in the radio shop; that he immediately then stepped back outside and pulled the door back, kind of like he found it, and left; that he walked west on 7th Street and on across Trade Street, and as he crossed Trade and was walking on down 7th Street towards Oak Street he saw Isiah, a boy he knows as Isiah, and that he spoke to him; that Isiah spoke to him; that Isiah said to him, "Boy, I'll give you $18.00 for that radio;" he said he said back to Isiah, "Make it $10.00;" that he walked on north on Oak Street and Isiah followed him—they walked on, and Isiah followed him about twenty or twenty-five feet behind him; that he got to 8th Street and that Clyde Brown, Clyde stated, then turned to the left on 8th Street and went in the direction of Cherry Street, and that Isiah went on North on Oak Street, and that he went on to Cherry Street [fol. 139] and down Cherry Street and up on a railroad siding there which he calls the White Sand, which is about 100 to 150 feet off of Cherry Street. The colored people in that section all call that railroad siding the White Sand, because there is white sand spread all in there. Clyde stated that he then walked on up on the White Sand where he saw Augusta Henry; that he spoke to Augusta Henry and Augusta Henry asked him to run his dog back, a little dog that was following him, and that he did run the little dog back, and that he went on home. He told us that on Tuesday after Mattie Mae had been down there to the jail.

Augusta Henry was brought to the Station and questioned, and asked, in Clyde's presence, if he did see Clyde, when he had seen Clyde, or if he had seen him. He stated that he did see him down on the White Sand on this day, and that he looked like he had something on his clothes that looked like tar or grease, and that he asked Clyde what it was that he had on his clothing; that Clyde told him that he had been working, laying tar or in tar and made himself a dollar and quit, and at that time Augusta Henry told Clyde, in his presence, he asked him to run his dog back at that time.

I was present when Roosevelt Peters and Tom Campbell were there. Roosevelt Peters and Tom Campbell stated, in Clyde Brown's presence, that they did see him down on the White Sand around 12:23 or 12:30 on June 16th.

I think the next time I talked with Clyde was after Capt. Burke read the warrants to Clyde on Saturday. On Saturday morning Clyde was charged with assault with intent to kill and rape on Betty Jane Clifton, and the warrant was read to him in our record room on the second floor of the City Hall. After Capt. Burke read the warrants to Clyde, Capt. Burke left the office and, so far as I know, left the building.

[fol. 140] At that time Clyde made a statement to Mr. Carter and myself and stated that he hadn't told the truth; that he wanted to tell it like it happened. He stated on June 16th, about 11 o'clock, he left home, as Mattie Mae said; that he didn't think Mattie Mae knew that he carried the radio; that he left there and at the time he left there he was wearing a black, long-sleeved shirt and an old pair of ragged overalls; that when he left Mattie Mae's home he went to his mother's home at 408 West Twelve-and-a-Half Street. It is probably 150 feet across the railroad from the White Sand to his mother's home. Mattie Mae's home is approximately six or seven blocks from his mother's home, on beyond, going from the City. Taking a nearer cut across there it probably wouldn't be no farther than five blocks, walking. Mattie Mae's home is on Wilson Street, in the first block North of Northwest Boulevard. The White Sand is South of Northwest Boulevard. Clyde stated that he left home that morning around 11:00, left Mattie Mae's house around 11 or shortly after; at that time he didn't know whether Mattie Mae knew whether he had the radio or not, but he did have it. He stated that he had on, at that time, a black wool shirt, long-sleeved, and a pair of ragged waist overalls; that he left home, and he went to his mother's home on Twelve-and-a-Half Street and that he changed clothes there; that he took off this old black shirt and that he put on a sport shirt, green sport shirt, and a pair of grey checkered trousers, and that he went from there up to Clifton's Radio Shop, and that he went in and talked with the little girl reparding a radio, getting it fixed; that he was informed by her that they didn't work on radios in the daytime but her father did that work at night. He stated that he didn't leave the radio; that he left there and went around to Fowler's Furniture Store; that he went in and talked

with them regarding getting the radio fixed; that he left the radio there and that he walked down to the City Market and was gone a short time and decided to go back and get [fol. 141] the radio, which he did; that he got the radio and that he went back by the Clifton Radio Shop; that he went in, and that while the little radio that he had was playing, he was in the act of taking a billfolder out of the desk drawer, and that the little girl that was in there alone at that time caught him taking this billfolder and putting it in his pocket; that she screamed and started toward the rifle; that he beat her to the rifle, and that he grabbed her by the throat with one hand and that he reached and got the rifle with the other hand. He stated that he hit her with the rifle two or three times, and that she fell to the floor, and that he then started to leave, got to the door, that he heard her groan and decided that that wouldn't do, that she might recognize him; that he went back and got the rifle and hit her two or three more licks with the rifle, and that he left and went out of the radio shop and West on Seventh Street; that he crossed Trade and headed on towards Oak Street; that he did see Isiah, as he stated; that they spoke; that Isiah followed him on North on Eighth Street; that he took particular notice that Isiah didn't get too close to him for the reason that he had blood on his clothes and he didn't want Isiah seeing the blood, so he walked on North on Oak Street to Eighth Street and Isiah never did get any closer to him, and that he thought Isiah must be around 20 to 25 feet behind him during that time; that he turned to the left on Eighth Street and that Isiah went straight on out Oak Street; that he walked down to Cherry Street and then followed Cherry Street a short distance to where you turn up to the railroad siding which he calls the White Sand, and up on the White Sand he met Augusta Henry, and that Augusta Henry asked him what it was all over his clothes. Clyde stated that when Augusta Henry asked him about his clothing he told him he had been working in some tar, that he had made himself a dollar and quit; that at that time Augusta Henry asked Clyde to run his dog back, which he did, and that he went on up [fol. 142] to his mother's; where he took those clothes off and put on the same clothes that he was wearing when he

left Mattie Mae Mitchell's home that morning, and that then he went back to Mattie Mae's home dressed just like he was when he left there.

As I recall, Clyde told about making a telephone call, the last time I talked with him; he might have stated that in that conversation on Saturday, but I don't recall that clearly in my mind; but I do know he made the telephone call in the next one, on Monday. I don't recall whether he told me about the telephone call on Saturday now or not; I am not positive about that.

On Sunday morning, Mattie Mae Mitchell, Clyde's girl friend, wanted to go up and talk with Clyde in jail. Mattie Mae Mitchell is the girl he had lived with part of the time. Mr. Carter and I went up in jail with Mattie Mae Mitchell, and we went into the little kitchen up there where the meals are prepared, and Clyde was brought in there, and they talked, and during her conversation, Mattie Mae Mitchell asked Clyde what he did with the clothes that he was wearing on this occasion. Clyde asked Mr. Carter and me if Mattie Mae Mitchell would be allowed to get these clothes if he told her where they were. We informed him that she would. Then, at that time, Clyde said to Mattie Mae, in a low tone of voice, "In the old liquor stash." Mattie Mae shook her head, yes, that she knew where that was. I believe Clyde added, his mother's house, and Mattie Mae indicated that she knew where that was. Then Clyde was placed back in jail and Mr. Carter and I went with Mattie Mae Mitchell to the home of the mother of Clyde Brown, which is 408 West Twelve-and-a-Half Street. While searching around in the yard there around the home, the next thing we noticed, in a few moments, Mattie Mae was walking down between the houses with the pair of pants rolled up under her arm.

[fol. 143] (Witness indicated pants marked "State's Exhibit No. 1" for identification). We stopped Mattie Mae and took those pants from her and talked with her about the spot that she got them from, the particular place where she got them from, and she carried us and showed us an old trap in the floor of a toilet next door to his mother's, a toilet that is on the back porch, and there is a loose plank in the floor of that toilet. Mattie Mae carried us to this

trap and told us that that was where she got those pants. She had them wrapped at that time in a newspaper that was damp and dirty, and at that time there were other newspapers in that trap that were damp and dirty.

After recovering the pants I showed them to Clyde Brown, and he stated that they were his pants and the ones he was wearing at the time that he said he had gone in the shop.

Q. Now, Mr. Reid, I want you to tell the jury what happened on Monday morning, the following Monday morning after Clyde was arrested on Monday, the 19th?

Objection—overruled—and defendant, in apt time, excepts—Exception No. 19.

On the Monday morning following the Monday Clyde was arrested, Mr. Carter and I were working in a radio car and received a call to come to the Station. When we went in, Capt. Burke and Chief Gold informed us that Clyde Brown had been asking for us and had asked for us the second time. At that time we went up in jail and got Clyde Brown and carried him down to the Detective Office on the second floor of the City Hall, Room 213. At that time Clyde stated to us that he had not told all the truth yet, and that he wanted to get it off his chest, that it was worrying him, and that he wanted to make a true statement as to exactly what happened in this case.

[fol. 144] During that conversation, Mr. Carter warned Clyde of his rights, and Clyde went ahead and made this statement: He stated that he left home, on Wilson Street, shortly after 11:00 o'clock on June 16th, on that morning; that when he left there he was wearing an old black shirt with long sleeves and ragged waist overalls; that he left there carrying this little radio of his; that he went to his mother's home on West Twelve-and-a-Half Street and changed his clothes, putting on a short-sleeved sport shirt, green knit shirt, and that he put on a pair of grey checkered trousers; that the reason he did this was so he could change back in the same clothes he was wearing before he returned home, to be dressed like he was when he left home. He stated after he did that he left; that he walked uptown to Clifton's Radio Shop; that he went in and talked to the

girl in the shop about repairing his radio; that she informed him they did not work on radios in the daytime, that her father worked on radios at night, that she would have the radio worked on that night if he cared to leave it. He stated that at that time the girl was friendly and nice as she could be, however, he told her that he would not leave the radio, that he would take it somewhere else, and that he left, went around to Fowler's Furniture Store on Liberty Street; that he went in there and talked with the men in Fowler's about getting his radio fixed, and that while he was in there they called someone else to see if they could work on his radio; that he left the radio there and walked back North on Liberty Street to Seventh Street and back down to Grossman's place, which is almost directly across the street from Clifton's Radio Shop. He stated he went in Grossman's Record Shop and asked to use the telephone; that while he was using or attempting to use the telephone he got the number off the telephone; that he hung the phone up and left there and went down to the City Market; that while at the City Market he called Grossman's Record Shop, across the street from Clifton's Radio Shop, and asked him to call the girl to the telephone [fol. 145] from Clifton's Radio Shop; that a few moments later the girl answered the phone; that he tried to talk like a woman and tried to detain the girl at the phone long enough for him to go up and search the place for money; however, the girl told him she could not stay away from the radio shop, as she did not lock the door, and that she hung up and he hung up. At that time he stated he went back to Fowler's Furniture Store on Liberty Street and told them he had decided not to leave his radio there, that he was going to get it fixed somewhere else; that he took his radio and went back up Liberty Street and down to Clifton's Radio Shop on Seventh Street the second time; that he went in and the little girl was there, alone; that he had his radio on and was playing it and he sat it on the counter; that while the little girl was looking and listening to the radio he was taking a billfolder from the lefthand top desk drawer in the radio shop; that while in the act of putting this billfolder in his pocket, the little girl saw him and started towards the rifle that was standing against the wall

in the place; that he grabbed her by the throat with his left hand and pushed her down on the floor behind the counter in the radio shop; that he held onto her throat with his left hand; that he taken his right hand and pulled her pants down and that he had taken his private out, holding onto her throat with his left hand; that he had taken his private out, which was real hard, and put it against her private, and that he pushed on it several different times, but that he never did get it in but just a little bit. He said he tried several times and that each time he would try that it would slip out and slip downward. He said he kept on doing this until he satisfied himself down between her legs and towards—on the floor. He said that he got up, at that time, and at the time he got up that she had stopped struggling and wasn't making any noise; however, he said at that time her eyes were open but she was laying perfectly quiet, not [fol. 145] making any noise. He stated that he started out and when he got to the door of the radio shop the little girl jumped up and started screaming. At that time he stated that he knew she would recognize him. He stated at that time that he'd have to fix her so she couldn't recognize him; that he went back, picked up this rifle, and that he hit the little girl two or three times in the face and on the jaw with the rifle; that the little girl fell to the floor and that after she fell to the floor he hit her two or three more times on the head and face with the rifle, and at that time he pulled a mattress off of a steel cot that was laying flat on the floor under the counter, with its legs folded under. He stated he pulled this mattress off of the cot springs, placed the little girl on those springs, laid the mattress on top of her and he then left there, went out the door and west on Seventh Street, as he stated in the other statements; that he crossed Trade Street, went on to Oak Street, saw a boy he knew as Isiah; that Isiah asked him what he'd take for the radio, or offered him $18.00 for it, and Clyde stated he said, "Make it Ten;" that he walked on north on Oak Street, carrying this radio, and that Isiah followed around 20 or 25 feet behind him; that when he got to Eighth Street he turned to his left and that Isiah went straight on on Oak Street; that he went on to Cherry Street and up on the White Sand, where he met Augusta Henry; that Augusta Henry asked

him what it was he had on his clothes; that he told him he had been working in some tar and made a dollar and quit; that Augusta Henry asked him to run his dog back, which he did. He stated that he went on then to his mother's; that he pulled off his clothes and stashed or buried these pants, and that he put back on the same clothes he had on when he left home, and that he hid the billfolder he had taken from the radio shop in the back yard of his mother's home, near a fence, in the high grass and weeds, and that this bucket he put this billfolder in was about two-thirds full [fol. 147] of dirty water. He stated he put this billfolder in this bucket of dirty water and placed a rock on top of billfolder after taking $1.62 from the billfolder, and that he then went on home and laid down across the bed at Mattie Mae's home back on Wilson Street about, as near as he could get at it, maybe 12:30 or quarter of 1, something like that. Clyde stated that when he left the radio shop and was crossing Seventh Street, about the time he was passing the filling station near the corner of Oak and Seventh there, he looked back over his shoulder and saw a pop truck drive up in front of the place and saw Mr. Clifton get out and go inside and come immediately back out. Clyde told me what kind of a truck it was, but I don't recall at this time.

After Clyde told us about the pocketbook Mr. Carter and I then went to his mother's home, 408 West Twelve-and-a-Half Street, walked around behind the house, walked out in the back yard and walked straight to a fence that divided the lots, and in the high grass and weeds I saw a bucket sitting there, over half full of dirty water. When the bucket was turned upside down, a rock and a billfolder came out of the bucket.

The billfolder you hand me is the billfolder I found, and its contents are the same now as when I found it. This key, which Mr. Clifton stated was the key to his radio shop, was in the billfold. There was no money in it at all. Those pictures, the public library card and the lipstick pencil were in the billfold at the time I found it.

Cross-examination.

I testified to five or six different statements purporting to come from the defendant, including the confessions. I could not be in error about anything he told me. I have quoted what the defendant said to me, as near as I possibly can, word for word. I have not added one word to two or three of those statements.

[fol. 148] (Q. Haven't you added a little something to two or three of those statements, Mr. Reid?

A. Not one word).

I have not left off anything that I know of. If I left off anything it was something that I didn't think of, I forgot, it slipped my mind; but I didn't add anything. He did tell me what kind of a truck it was, but I don't recall now; that is one thing I don't remember. There may be some other things I didn't remember.

Q. You say you don't think you have remembered some things he didn't tell you?

A. I say it is possible he said some other things I don't remember.

Q. You don't think you have testified to some things he did not tell you?

A. Absolutely not.

The first time I talked with Clyde Brown was approximately 4 o'clock P. M. June 19th. The next time I talked to him was again on the 19th, around 9:15 o'clock P. M., maybe 9:30. The next time I talked to him was on the 20th, in the afternoon, probably around 3 o'clock. On each of those occasions he told me merely that he went to the radio shop to leave a radio and that the young lady informed him that she did not repair radios in the daytime but that they were repaired at night, and that he left and carried the radio some place else, or something to that effect.

I did not talk with Clyde on the 21st; I did not talk with him each day. I was present when he was questioned by Capt. Burke twice on the 19th, and I was present when Capt. Burke talked with him once on the 20th. I was present when Capt. Burke talked with him on the 22nd, once. I did not join in the questioning but was only present when Captain Burke questioned Clyde twice on the 19th and once

on the 20th; and then on the 24th, and we talked with him Sunday, the 25th, and Mr. Carter and I talked with him [fol. 149] again the 26th. That was really six times.

Q. And you say it is possible now for you to sit here, without reference to any statement, any written statement or anything, and relate accurately to this Court, his Honor and the jury what he said to you on each of those six different occasions?

A. Yes, unless—I didn't add anything; unless I have left off something.

Q. Why would you add that, Mr. Reid?

A. Well, it is possible that he could have said some things that I don't recall, that I didn't recall, but I do know that I have not added to any of his statements that he has made. I know that.

Q. Isn't it just as much likely that you could get the statement that you say that he related on the 19th mixed with the one, or confused or tangled up with the one he related on the 20th, 21st, or 22nd?

A. Well, that would be possible, if you didn't have anything else to do with the case other than just talk with him; but, following all these statements up, it impresses you well enough that you don't forget, after going out, you know, and checking on these different stories and following things like that up, and studying over it over the period of time it takes to do that, then it impresses you well enough to where you don't forget it.

I stated that on one occasion I went to the office and Mattie Mitchell was in the office there with Clyde Brown. I probably did go out and get her and bring her to Police Headquarters; I don't say now I did, I say I probably did. If I did bring her to the City Hall, then she was in Capt. Burke's office at the time that I walked in there and heard [fol. 150] the conversation, when Clyde Brown was brought in there. That is a minor detail, but it is a part of all this transaction I am talking about that I can "remember so well." I don't know that I did go out and get her and bring her to Police Headquarters then. I think I did go get Mattie Mae a time or two to talk with Clyde, but whether or not that was one of those occasions or not, I don't know. I went and got Mattie Mae a time or two.

I am not in error in stating that Clyde Brown told me he went back and struck that girl two or three times; I am going to stick to that.

Q. Have you made a record of any statement made by the defendant?

A. No, I did not make a record of it.

Q. You didn't?

A. Not of all of it.

Q. Sir?

A. Not all of them. I made notes on some of them, but not the complete statement that he'd make; I didn't make records, myself, on them.

Q. You understand what I meant, Mr. Reid? I mean, did you make a recording of any kind of his statements?

A. A recording?

Q. Yes?

A. You mean, of Brown, himself?

Q. Yes, sir?

A. Yes, we did.

Mr. Price: I just wanted to ask you if you made it. I think that is all, your Honor.

Henry C. Carter testified: I am a police officer for the City of Winston-Salem and am assigned to the Defective Division of the Police Department. I assisted and worked with Mr. Reid in the investigation of this matter.

[fol. 151] The case was assigned to Mr. Reid, and I assisted him with it. Capt. Burke also worked with us in this case.

There are approximately 54 feet from the front of the Clifton Radio Shop to the corner of Seventh and Trade Streets, and approximately 158 feet from the Clifton Radio Shop to the intersection of Oak and Seventh Streets. There is only one block from the intersection of Seventh and Oak Streets to Eighth and Oak Streets, a distance of approximately 300 feet. There is a distance of approximately 400 yards from the Clifton Radio Shop to the place referred to as the White Sand. There are two routes from Eighth and Oak to the White Sand, one route going on out Oak Street,

and the other down Eighth Street to Cherry Street, and down Cherry Street to where you go up into the Southern siding there. I would say it would be a little nearer to go directly down Oak Street, across the railroad.

The defendant's mother was Mattie Mae Kennedy. I know where she lived on this occasion. From her home to the White Sand was approximately 300 feet, maybe 350. The White Sand is a railroad siding with a large open space that sometime in the past someone has placed a lot of white sand or rock dust on, and the ground itself is white looking.

Mattie Mae Mitchell, who has been referred to as the defendant's girl friend, lives at 1318 Wilson Street, about 200 yards, maybe 250 yards from the White Sand, on beyond the White Sand going away from the area of the Clifton Radio Shop.

From Grossman's Record Shop to Clifton's Radio Shop the distance is approximately 32 feet, the street being 24.5 in width; they are directly across the street from one another.

The Fowler Furniture Company is on Liberty Street in the 600 block. The distance from the radio shop to the [fol. 152] corner of Seventh and Liberty is 151 feet, and the furniture store is approximately 200 feet South of the corner, or a distance of approximately 350 feet from the radio shop to the furniture store.

This object is an Emerson portable radio. Clyde stated that he had pawned the radio at the Winston Jewelry and Loan office, and the radio was taken from there.

I was present with Mr. Reid during some of the conversations he had with the defendant. On the afternoon of June 24th, which was on Saturday, Capt. Burke, Mr. Reid, and myself, and Clyde Brown were in the office of the Record Division and the Detective Division on the second floor of the City Hall. At that time Captain Burke read two warrants to Clyde, one of them charging him with rape, the other charging him with assault with a deadly weapon with intent to kill. At that time Captain Burke left the office, and Mr. Reid and I talked with Clyde. I told Clyde that he was charged with these two charges; that he did not have to make any statement at all; that any statement that he did make would be used for him or against him in

Court. I told him that he was entitled to counsel, and asked him if he had any statements to make. He made the statement which Mr. Reid testified to yesterday. He stated that he did go to the radio shop, Clifton's Radio Shop; that he took a small portable radio he was to have worked on; at that time he stated that the radio would only play for a few minutes, and that he was supposed to pawn it to get some money for his girl friend to give a party; that he wanted to be sure that the radio played long enough for the pawn shop to accept it; that first he went by the radio shop and the girl there told him there was no one to work on the radio, they only worked at night; that he told her that he would take it somewhere else, and he carried it up to the Fowler Furniture Store on Liberty Street and left it there for a while; that he went down to the Grossman's Record [fol. 153] Shop, went in and asked to use the telephone, so that he could get the telephone number from the phone; that he went down to the City Market and called that number, which was Grossman's telephone number, and asked to speak to the lady in the radio shop across the street; that in a few minutes she came to the phone and answered and he attempted to disguise his voice to sound like a woman; that he tried to get her to stay at the telephone so that he could run up to the radio shop and go in it and search for money, and that what he was intending to do was to steal money from the desk; that he know where it was usually kept. He said that she would not stay at the phone, she told him that she would have to go back to the shop; that he then came up by the radio shop, walked up to the Fowler Furniture Store and got his radio, went back down to the radio shop; that he went in and was playing it. He said the girl liked the radio; that while she was playing the radio, he slipped his hand into the desk drawer, and as he was bringing out the money, the billfold, she caught him or saw him and she hollered and started toward a rifle which was sitting in a corner. He stated at that time that he beat her to that rifle and he caught her, hit her over the head with the rifle, knocked her down, and he said that he started out and she was groaning; that he walked back, took the rifle again, while she was lying on the floor he hit her two or three times; that he rolled her upon this cot,

pulled the mattress over her and went out, went on off, taking the radio with him; that he went on down to his mother's home; that there he changed clothes and went back to his girl friend's home on Wilson Street. At that time he stated that he had left home wearing a black shirt and a pair of overall pants and that before going uptown he had changed clothes at his mother's home, but he didn't think that anybody there, his mother or anyone else, know that he had changed his clothes; that when he went back there he took the clothes off and put back on the same ones [fol. 154] he had on when he left his girl friend's house. He said that he saw Isiah at the corner of Seventh and Trade Streets; that Isiah asked him if the wanted to sell the radio, and said, "I'll give you Eighteen for it," and Clyde said he told him, "No, make it Ten," said he repeated that twice, and said he walked about 20 or 25 feet in front of him, walking fast, said he didn't want Isiah to catch up with him. He said he was nervous, sweating, and he figured that if Isiah caught up with him he would think something was wrong with him. He said then he went down on the White Sand and saw two other boys—I don't recall their names at this time—I believe one of them was Augusta Henry, and one of them ask him to run his dog back home, and he said that he did that. And about that place in the conversation he stated that he would like to go back to his jail cell, that he wanted to think about it some more; and he was taken back to his jail cell at that time.

On Sunday morning, Mr. Reid and I went down to Mattie Mae's house. We got her, she went with us up to the Station. She wanted to see Clyde and Clyde had told us that he wanted to see her. We took her upstairs on the third floor and went into the office there, which is used for a kitchen. There Clyde and Mattie Mae talked some with Mr. Reid and I there in the room. At that time Mattie Mae told Clyde that we were looking for his pants that he was wearing on the day of this offense. She asked him if he would tell her where the pants were. He said that he would, if she would be allowed to go get them herself. He told her, in the low tone of voice as Mr. Reid stated, that the pants were buried in the old trap, and she asked if it was the one that was used by his mother sometime previous.

He stated that that was right, that was the one, and after a few more - were spoken between the two, we left. We went down to his mother's house and we were looking for the trap and when Mattie Mae got the pants and was seem [fol. 155] coming through between the two houses with the pants under her arm they were wrapped up in a sack. They were given to one of the officers—I don't recall which one it was that actually took the pants from her—and we asked her where the pants had been taken from, told her that he would like to see. She took us to a house next door to his mother's, and on the back porch there was an enclosed toilet. We received the key from the owner of the house, living there, opened the door, and there, in the floor, there was a loose board, and she stated that was where the pants came from. We opened this small trap and there we found an old newspaper, which was almost wet, it was damp.

We then took the pants to Police Headquarters, took them to Clyde Brown and asked him if that was the pair of pants that he was wearing at the time he committed the offense and the same pair of pants that he had buried. He stated that they were the ones. The pants have some black substance on them. We asked him where that came from and what it was. He stated that it came off of the floor of the radio shop where he was down on his knees. That about concluded that interview.

On Monday morning, at approximately 10:00 o'clock, in consequence of a call, Mr. Reid and I went to the Station, where we were advised that Clyde Brown had been asking to see us. In consequence of that he was brought down to the second floor in Room 213. The first statement that Clyde said at that time was: "I haven't told all of the truth and I want to tell it all now." At that time Clyde was told this; "Clyde, you have been told by Captain Burke, Chief Gold, and several other officers on each occasion that you have been talked with, that you did not have to make any statement; that any statement that you make could be used for or against you in Court, and that you was entitled to counsel." He stated that he had not told the truth and wanted to tell it; that he had been thinking about [fol. 156] it over the week-end. At that time he related the story that Mr. Reid testified to yesterday. He said that

after he had first gone to the radio shop, then he took the radio up to Fowler's; that he went back to Fowler's and got it, went down to the radio shop and was there, playing the radio; that the young girl was friendly and nice toward him, and that she caught him taking something out of the desk drawer, which was the pocketbook that he said he had taken; that she hollered; that he was right near the back of the counter; that he went around behind the counter; that he caught her by her throat, choking her, and pushed her down on the floor; that he held her down there with his left hand on her throat; that he pulled her pants down with his right hand, took his private and tried to place it in her private; that he did that several times, and he only got it in a little bit, he said. He said that it kept slipping out and down, that it was leaking, and that he, in his words "messed off on the floor;" that when he got up she was lying on her back with her eyes open but she was not moving and was not saying anything; that he thought that she was out; that he started to the door to go out and about the time he reached the door she jumped up and was jumping up and down, hollering, screaming; that he went back and caught her again, took the rifle and hit her on the head, he said several times, knocking her down on the floor, and then placing her on the cot, which was underneath the counter, placing the mattress on top of her, and that he left. About that time Clyde was asked why he beat her like he did. He stated that the reason he did that was to keep her from recognizing him; he made this motion to his head (witness made circling motion with his finger pointed toward his temple), something like that, that he didn't want her to be able to recognize him; that he knew that she would know him, he had been in there on other occasions, and at one time he had gotten by with stealing, I believe it was approximately $5.00, from this same desk [fol. 157] drawer on one occasion. Then he said he went on home, down this route that was mentioned, to Seventh Street and Trade, where he saw Isiah and had the conversation with him regarding the radio; that he went on down Oak Street to Eighth, from Eighth to Cherry, from Cherry Street he went up onto the White Sand. At that time Clyde stated that he was walking over near some weeds that was

on the side kind of the railroad track; that he went up to his mother's house and went in without anyone seeing and knowing that he was there, to his knowledge; that there he changed his clothes. He stated that the reason he had those clothes there at his mother's was so that he would have a change of clothes somewhere else other than his home, so that he could put off the clothes that he was wearing when he committed the crime, so that he would not be recognized by the clothing he was wearing; that after he changed his clothes he went on down to his girl friend's house and in a short time after he went down there he came back uptown to pawn the radio for Mattie Mae. That was about the conclusion of that interview.

Clyde told us where he had put the pocketbook. We had made several searches in the community from the radio shop plumb down to the White Sand and all around in that section for the pocketbook. He stated that he had taken the pocketbook, taken a small amount of money from it, placed it in an old tin bucket at the southeast corner of his mother's house near a fence in some tall weeds; that he put a rock on top of the billfold or pocketbook down in some water. Mr. Reid and I together found this billfold at the place that he stated he put it, the billfold that has been identified here yesterday as State's Exhibit No. 2. It had a key in it and had pictures of boys and girls and also had an identification card with Betty Jane Clifton's name on it and other cards.

(At this point the State introduced the pocketbook or billfold and its contents as "State's Exhibit No. 2," the [fol. 158] pair of trousers, previously identified as "State's Exhibit No. 1," and the portable radio, as "State's Exhibit No. 3.")

Cross-examination.

In all I talked with Clyde Brown three times with Mr. Reid and myself and one other time I was present, on Tuesday afternoon, at the time Captain Burke, Mr. Reid, I believe Chief Gold, and myself, and I think probably they are the times I talked with him. I was present on Tuesday, the 20th, at the times he was talked with. I talked

with Clyde five or six times; one time, when he was asked to identify the pants, at the time that he was in Capt. Burke's office, on the 20th, the 24th, on the 25th, and again on the 26th. Then I talked with Clyde again on the 27th or 28th, I forget which it was. Part of those conversations would be at the time Mattie Mae would be taken up to see him.

I cannot recall definitely that I talked with him between the 26th and the 28th. I did not talk with him between the 20th and the 24th. I was present on the 20th; I don't recall that I talked with Clyde too much at that time; I was present at the time that he was talked with, mostly by Capt. Burke; that was on the 20th, in the afternoon. The next time after that, that I talked with Clyde Brown, was on the 24th. I was not present when anyone else was talking to him between the 20th and the 24th, that I recall.

On the 24th, Mr. Reid and I were present when Capt. Burke read the warrants to Clyde Brown. After he read the warrants, Capt. Burke left the office, leaving Mr. Reid and me with Clyde; there was no one else in there at that time. After Capt. Burke left, I warned Clyde of his rights and then he made the statement.

During that conversation, Clyde told me that his purpose was to get the young lady away from the radio shop so that he could go in there and steal some money. Again [fol. 159] on the 26th, he told me that his purpose was to go in the radio shop and steal some money; that he had stolen some money there before. I wouldn't ~~say definitely~~ whether it was Tuesday or Wednesday after that that I talked with him again, but I did talk with him again; it was two or three days, maybe two days, after he had given us the second statement regarding what he had done, on Monday. It was on Monday that he gave the statement he said was right, the time I have explained to the Court in detail that he told me what happened up there.

Q. Is there any way you could account for the fact, Mr. Carter, that it appeared in the Winston-Salem Journal on Wednesday that he made a statement such as you describe here, on Tuesday?

Objection—sustained and defendant, in apt time, excepts —Exception No. 20.

I did not know that the public understood that a statement was made on Tuesday instead of Monday. I did not know that the public generally understood that a statement was made on Tuesday instead of Monday.

One of the statements was made on Monday, the last one, and one of them was made on Saturday, the 24th, which was the first statement Mr. Reid and I got from Clyde Brown. On Sunday, Clyde Brown told his girl friend where the pants were, and that is about all he said to us on Sunday. He was talking with Mattie Mae, on Sunday, and she would talk with him some. Clyde went into detail on both of those statements, but the last statement, which was on Monday morning, was the first time he had stated that he assaulted her other than hitting her with the rifle. On Monday, he told me again that his purpose in going in that radio shop was to steal some money.

I was not one of the first officers to go into the radio shop after the call was put in to Headquarters; I was up there [fol. 160] sometime later. At the time the call came in I was in the office at Headquarters, and some little while later I did go to the Clifton Radio Shop; it was probably an hour later before I arrived there; I cannot fix the time of my arrival definitely. The call came in at approximately 12:30, and some little while later instructions were received from Captain Burke that all of us were to be directed to that vicinity and contact him. I would say that was approximately 1 or 1:30.

At the time I arrived at the radio shop I went inside of the shop, and I took part in part of the investigation. The measurements, to which I testified on direct examination, were made some two or three days later. Mr. Reid, Mr. Burton and I were together at that time, and we made the measurements. We also made some measurements on the inside of the shop. The width of the shop on the inside is 14 feet. The distance from the counter or work bench to the back wall is 6.5 feet, and from the shelf of the work bench to the floor is 3 feet. Part of that 3 feet is taken up by the cot which has been referred to here as being part

of the furniture in that room. I do not have the measurements of that cot here, but the height of the cot was approximately 3 inches, or maybe it could be 4 inches; I don't think it would be a little more than that; it was lying flat on the floor, had legs that folded underneath it, lying flat on the floor.

The photograph which counsel hands me is not a correct representation or photograph of the cot under the counter; at the time I saw, the mattress was not on it, the way it is here; there were several other articles lying all around on the floor, and it wasn't under the counter as straight as it is now. I saw the mattress on top of the cot. The thickness of the mattress and the thickness of the cot itself would probably be 6 inches, or maybe 7 inches; I don't think it would be more than that.

[fol. 161] There was some wiring under the work bench. I was not one of the officers who tore away or took away some of the wiring; it is my information that some of it was removed from there. There was some cardboard removed from the counter, but what part of the counter that was taken from, I could not say; I did not take it from the counter and I was not present when it was taken from there; I was informed that; I did not pay any attention to that particular portion of it before it was removed. There were several wires hanging down under the work bench. From the inside, I would say it was approximately 5.5 feet from the floor to the ventilator; I do not know how high it would be from the garage side. The floor level of the garage is lower than the floor level in the radio shop; my best impression is it would probably be 24 inches or more lower than the floor level in the radio shop.

Re-direct examination.

The photograph counsel hands me is a correct representation of the back wall of the radio shop, the wall between the garage and the radio shop, showing the opening to which I have just referred, which is a round black-looking opening, also showing the fan. (Photograph received into evidence as "State's Exhibit No. 4," and the Court instructed the jury as follows: "Gentlemen, this photograph is admitted into evidence for the purpose of illustrating the

testimony of the witness, if you find it does illustrate his testimony. It is not substantive evidence in itself.")

The photograph which counsel now hands me is a correct representation of the area of the radio shop where the cot, about which I have testified, was laying and under the counter at the time I first arrived there and observed it.

The Solicitor: I offer that as State's Exhibit No. 5.

The Court: Gentlemen of the Jury, this is offered for [fol. 162] the same purpose as the other photograph, that is, for the purpose of illustrating the testimony of the witness, if you find it does illustrate his testimony, and not substantive evidence.

Objection—overruled—and defendant, in apt time, excepts—Exception No. 21.

(Said Photograph was received into evidence and marked, "State's Exhibit No. 5.")

Re-cross-examination.

I'll say it was approximately an hour after the attack before I reached the scene, and what happened in the shop in the matter of re-arranging the equipment there in the preliminary investigation, I don't know definitely.

Re-direct examination.

I didn't arrive there until about an hour after the call came in. The condition I have described was what existed at the time I arrived there.

John R. Wooten testified: My name is John R. Wooten. I am an officer in the Police Department of the City of Winston-Salem, assigned to the Detective Division.

I was called to the scene of the Clifton Radio Shop on the 16th day of June, and arrived there at approximately 12:40. At that time, Mr. Clifton and Patrolman C. R. Combs of the Police Department were inside the shop.

On my arrival at the Clifton Radio Shop, this barrel of this .22 rifle was found in the Clifton Radio Shop with the stock broken off. At that time it was just in front of the

work bench laying across the corner of a desk. The stock was found behind the work bench, over behind some boxes and radios.

The Solicitor: I offer the rifle into evidence as State's Ex-
[fol. 163] hibit No. 6.

Objection—overruled—and defendant, in apt time, excepts—Exception No. ——.

(Said rifle was received into evidence and marked "State's Exhibit No. 6.")

Cross-examination.

Mr. Combs is an officer who walks the beat up in that section, or did at that time. Officer Combs and Mr. Clifton were inside the shop at the time of my arrival. I got there about five minutes or so after the call came in. I examined that rifle carefully. I have my initials on there, "J. R. W.", that I put on there. When I examined the stock or butt of that rifle I didn't notice any old split in it; to my way of looking at it, that could have been done at the same time as this, so far as I know; there are no tape marks on there to show that that stock was split and was sort of taped together, and there was no tape on it at the time we found it; it was just like it is now, at the time we found it; I would not identify that as tape marks on there; I don't know that they are tape marks; it is possible that that is an old break, I don't know; Mr. Clifton did not tell me that was an old break.

Re-direct examination.

State's Exhibit No. 5 correctly illustrates the condition that existed within the radio shop and under the counter of the radio shop when I arrived there.

The Solicitor: Now, your Honor, unless there be some misunderstanding, I desire to introduce this rifle as State's Exhibit No. 6 and the rifle butt as State's Exhibit No. 7.

(The rifle barrel was marked "State's Exhibit No. 6," and the rifle butt was marked "State's Exhibit No. 7.")

[fol. 164] To my knowledge, there had been nothing moved within the radio shop between the time I arrived

there and the time Mr. Carter arrived there, I don't recall just when Mr. Carter did arrive, we were so busy. At the time I arrived there, officer Combs was in the shop with Mr. Clifton and was keeping everyone out of the shop.

Re-cross-examination.

When I arrived, Miss Clifton had already been taken to the hospital. The only thing I know about what changes took place in the arrangement of anything under the counter or around the counter in getting her ready to be removed to the hospital, is what Mr. Clifton told me.

THOMAS E. CLIFTON, recalled to the witness stand by the State, testified: State's Exhibit No. 5 is not a correct representation of the area of the radio shop, the cot and so forth as it existed at the time I first went in the shop. The mattress was laying level on there, just raised a little bit in the back, with my daughter under it. At that time I pulled the mattress off of her. That photograph, State's Exhibit No. 5, does correctly represent the condition as it existed there after I had removed the mattress from my daughter and after she had been removed from the cot; it looks just like it; the mattress is over here (indicating on photograph).

Cross-examination.

That photograph shows the cot as it usually is. There is wiring that goes to each one of the sockets there, one runs across over to the outside socket, and one runs from the first socket over to the front. The cardboard did run all the way across the front of that counter.

That rifle was mine; I have had it about two years; I traded with a fellow named Flynt. I did not know if the [fol. 165] rifle had a crack in the butt of it; I never remember seeing it cracked nowhere at all; it was in perfect condition; you can't tell by looking at it, what kind of crack it is.

C. R. Combs testified: My name is C. R. Combs. On the 16th of June of this year I was serving on the Police Force of Winston-Salem, and was working a patrol beat in the North Trade Street area; my hours were from 7 in the morning to 3 in the afternoon.

An ambulance came to the Clifton Radio Shop and I went to it; I was not called, I just went to it. When I arrived there at the Clifton Radio Shop, Mr. Clifton and the ambulance attendants were there and several more people just gathered up from on the street; Mr. Clifton and the ambulance attendants were in the shop and the other people were on the outside. I did not go inside until after Mr. Clifton and the ambulance attendants left. They brought the little girl out on the stretcher, and I then went in the shop. No one else was permitted in the shop until Mr. Reid came; Mr. Reid was the next man permitted in there; then there was no one permitted in there besides Mr. Reid until Mr. Wooten arrived there. I stayed on duty and no one but Police Officers were allowed in the shop, except Mr. Clifton and the ambulance attendants.

The photograph counsel hands me correctly represents the radio shop and the area immediately under the counter as it existed there at the time I arrived there.

The photograph correctly represents the rear of the building of the radio shop at the time I arrived there.

I took over the duty of keeping people out of there.

[fol. 166] Cross-examination.

The condition I found on arrival was just as it is pictured there (State's Exhibit No. 5), the bedding and all tumbled up just like that, and the mattress throwed out in the floor right in front.

I remained there until Mr. Reid arrived. Mr. Reid was the first officer to arrive after I got there. Mr. Reid arrived about two or three minutes after I got there; I wouldn't say just definite to the minute. I stayed there for two hours after Mr. Reid arrived on the scene. I taken care of the door and seen that no one entered the building except the Police Officers on duty. I was about 50 yards from it at the time the ambulance pulled up. I was right on Seventh and Trade, across Trade from it,

and I saw the ambulance when it pulled up, and I hurried over to it.

I saw Mrs. Grossman in the place there; she is the lady that runs the record shop across the street. The young lady was being brought out to the ambulance, the first I saw of her, and Mrs. Grossman was on the sidewalk in front of the place. That was a little after 12:00 o'clock; I wouldn't say the exact minute. I didn't make any notation of the exact minute. I didn't go back later that day; I never did leave; I remained there a couple of hours; I did not go back in the afternoon, after I left. I was back by there the next day, probably; other officers were there when I come by.

The State rests.

Mr. Price: Your Honor, before the State closes, I would like to call Mr. Reid back to the stand for a couple of questions.

The Court: All right, sir.

[fol. 167] W. E. Reid (recalled) to the witness stand by the defendant, with permission of the Court:

Examination by Defense Counsel:

I was not more or less the chief investigator in this. Our assignments are arranged so that the next man out answers the call, and I happened to be the next man out when the call came in; I was sent, of course, immediately to this place. The case was assigned to all the Detective Division, and Captain Burke and Chief Gold were the chief investigators; we work under them and with them. I was busy doing something regarding the case from the time I went there shortly after this incident until the case broke, but there was an awful lot of work that went on that I wasn't in on.

When I first got to the radio shop, I expect I stayed there one minute, not over two minutes. After I left the hospital I did not go back to the radio shop that day; I went back about two days later; I don't recall whether I went back to the radio shop the next day or not, but the

next time I recall going back is the day I went back with Mr. Carter and Mr. Burton and took measurements, as Mr. Carter testified to a while ago.

I was not present when the shop was dusted for figerprints; the only thing I know about that is what I have heard; I heard that it was dusted for fingerprints; I know who dusted for fingerprints only from what I have heard.

Mr. Price: Your Honor, may I have Mr. Wooten back on the stand, just for a question?

The Court: Come back around, Mr. Wooten.

J. R. Wooten (recalled) to the witness stand by the defendant, with permission of the Court:

[fol. 168] Examination by Defense Counsel:

I was present when the shop was dusted for fingerprints. We covered more or less every area of the shop; our attention was drawn to certain parts of it more than others. The rifle wasn't dusted at the shop; it was dusted in the laboratory; they did not find any fingerprints on there of the defendant, to my knowledge.

Q. It was dusted, really, more than once, wasn't it, tried, they tried to find the fingerprints of the defendant on the rifle—Is that right?

A. I couldn't say about that.

If they ever found the fingerprints of the defendant on that rifle, I haven't heard anything about it; I don't think that they did. Of my own knowledge, I don't know that the defendant's fingerprints were taken; as a routine, they do; I don't know that they took his fingerprints several times; I just never saw them take them. I did not find his fingerprints anywhere in the radio shop.

Examination by the Solicitor:

Q. Can you get a fingerprint from a rifle that is being swung like that, Mr. Wooten?

Objection—overruled—and defendant, in apt time, excepts—Exception No. 22.

A. This rifle was practically covered entirely by blood.

The Court: Is there anything further from the State?

The Solicitor: That is the evidence, your Honor. I had rested.

At the close of the State's evidence the defendant moves [fol. 169] for judgment as in the case of nonsuit. Motion denied and defendant, in apt time, excepts—Exception No. 23.

Defendant's Evidence

Dr. Harry W. Goswick testified for defendant: I previously testified that on my pelvic examination of Miss Clifton on June 2[illegible] I found there was a recent tear, not "fresh." Fresh would mean, done within a few hours. Recent is what I said.

Q. Now, whatever condition you found there, it was a tearing; I believe you said, exactly, "Pelvic examination reveal a quarter of an inch tear in the lower midline of the juncture of the labia"? That was, to be exact, about eight days from the 16th of June?

A. That is right.

Q. —from the date on which the young lady was assaulted or injured?

A. That is correct.

Some healing takes place in that time. There is not sufficient healing within a period of eight days that I can't determine whether the condition I found was recent or not; it depends upon the location of the wound. A non-infected wound would heal up in two or three days and only leave a small scar, but in a place where it obviously gets infected, such as this was, it will not heal up as soon. The rupturing of a hymen does not necessarily heal very quickly; sometimes it remains sore for a pretty good while. Soreness is something you can only get at from history given by the patient; you can't see soreness. Ordinarily, in a patient who is conscious, the rupture of a hymen heals very quickly, in a matter of a day or two; that would have a lot to do with it, on account of the personal hygiene; [fol. 170] they would take care of themselves better if conscious. This patient was being taken care of in the hospital. This condition did not need medication. There

is a difference in personal hygiene and medication. Of course, she got baths, but she was unconscious, and she was continually voiding in the bed, and naturally, she would stay infected some, longer than if she had been conscious.

I do not recall the exact time of day I made my vaginal examination of Miss Clifton; I think it was in the morning, possibly 9 or 10 o'clock in the morning.

Q. Doctor, isn't it one of those sort of academic things that in a case like this, where you even suspect there has been an assault or rape, that you record accurately the time of day and the date and all that sort of thing, very accurately?

A. It isn't necessary.

Q. It isn't necessary, but it is sort of one of the academic requirements?

A. I don't know what you mean?

Q. Isn't it one of the cardinal rules the doctors go by?

A. No, not to my knowledge, it isn't.

Q. You have never been taught that?

A. No.

(No cross-examination).

Mrs. Joseph Grossman testified: My husband and I operate the record shop just across the street from the Clifton Radio Shop, and we were operating that place of business on June 16th.

Mr. Clifton drove up in his truck, and we had a radio [fol. 171] in his shop to be repaired, so my husband said, "I think I'll go over and see if Tom has my radio repaired," and he ran across the street. In a few minutes my husband came out motioning for me to come there, then motioning for me to stay back, and then motioning for me to come there, and so I went on over there, and I saw Mr. Clifton come rushing out and go into the garage, evidently to telephone—I didn't know what he was going there for, but he did telephone for first aid, ambulance and everything. I went in there and I heard a noise, just an animal-

like noise, you might say; that is all she could do, because her mouth was closed—she had a very small mouth; both eyes were closed, with one, you could barely see that it was grey, and one side of her face was huge. I didn't know what had taken place.

I got there a good deal of time before the ambulance did. Mr. Clifton and I were the only two persons with the young lady, and Mr. Clifton was busy telephoning, trying to get the ambulance there, and I was busy getting wet towels to put to her ears to try to stop the blood from flowing. The blood was just pouring out both ears and just all over her, and I was bloody from my shoulders to my hands from helping.

Betty Jane Clifton had on ballet slippers, and one of those was missing, and the skirt was very wide, white, and it had flipped up in back when her father took the mattress off of her and put it over there.

Q. Will you please tell his Honor and the jury, was her clothing intact except for the absence of the slipper that you say was missing?

A. To the best of my knowledge. I saw nothing——

Q. Was there any dirt on the back of her dress at all?

[fol. 172] A. No, I didn't see it.

Q. Didn't see it? Was her underclothing intact?

A. Absolutely.

Q. —and pulled up on her?

A. I noticed that because she—I don't think she was wearing a slip, speaking frankly, and the dress was of a thick material, and very wide skirt, and she didn't need it to, you know, protect her from view, and it just flipped up, the back of her skirt had just flipped up, like that (witness moved hand in upward sweep), and I saw the back of her panties, if that is what you want to know. I saw her panties, but I saw nothing on them.

There was no blood or anything on her panties. The only blood I saw was up here, on her head. Her panties were pulled up in perfect position.

My husband was the second one in there; he saw her and he called me, because he can't stand things like that, men can't, and so I went over to do all I could for her, and I tried stopping the blood with cold wet towels, and I

had several in my shop, and I told my husband to go get the towels and wring them out, not too dry, so that I could stop the blood from flowing, and, too, there was a hole here (indicating left temple) in her head, besides her ear being split.

I remained with her until the ambulance came and they took her away. Then I left and went back to my place of business, because I had to wash up; I was just about as bloody as she was.

My husband and I have operated that shop there about four or five years, ever since the place was built.

[fol. 173] Cross-examination.

When I got there, it didn't seem like blood was everywhere; it was just at the head; it wasn't all around on the floor, because I would have slipped on it, because I had on rubber-soled shoes. I don't remember seeing blood on the floor. I don't remember seeing any blood on the mattress, because her father lifted the mattress over and then he lifted her over on the mattress, from the springs. She was face down on the springs, and that was the only thing that saved her life, because the air got to her through those coil springs; she would have smothered, otherwise. I did not get there before her father got there.

I saw her father drive up out in front and he had barely stepped inside when he came rushing out and sounded an alarm to my husband. My husband, Mr. Grossman, was partly across the street at that time and he hollered to Mr. Grossman. My husband stood still and made signs; he was dumbfounded; he made signs first one way and then another; he was completely all to pieces. Mr. Clifton had dashed to the garage around there to the telephone, and when he came rushing back he was all to pieces; he wasn't screaming for help; he was not begging for help; he was just, well, he was crazy—you know what I mean. I told Mr. Clifton to wring a towel out with some water, and he wrung it out so dry there was no water in it, and I had to tell him to put some water on it so I could put it to her ears. I don't know if the blood was strewn with the towels between the sink over in the corner and where she was lying

on the mattress; I had three towels. I had blood just on my arms; I had on a sleeveless dress; I had no blood on the front of my clothes, just on my arms, because I just touched her head.

Q. Did you see her before her father moved her?

A. Yes.

Q. Did you see her before her father moved the mattress? [fol. 174] A. Yes—No, No, No.

Q. What?

A. The mattress had been moved.

The mattress had been moved on the floor. The mattress was lying on coil springs on top of her; in other words, she was sandwiched between the coil springs and the mattress. She was not lying prone and not moving in any way; she was like that (witness illustrates squirming motion) kind of, moving when she could, but she was groaning, trying to attract attention, evidently wanting to. She recognized her father's voice, no other, and she would not make any noise, except when her father spoke, but she knew absolutely nothing that was happening.

Mr. Clifton wrung out one towel, my husband wrung out one towel and there were three towels used; I had to get Mr. Clifton to wring his out the second time because he was so nervous that he got all the water out of it. What I wanted was cold water to try to coagulate the blood that was flowing from her ears.

Her dress was just flipped up around her waistline, just the hem of it; from her hips down, she was exposed; she was on her face; she had been laid over on her face, and her dress was up on her back, and her whole body was exposed from her hips down; I did not see the front; I just saw the back; I saw her whole back; it was a dress that was very low cut in the back. I am not strong enough to turn her over; her father turned her over when he came back from telephoning. When her father turned her over her skirt was in the same place it was, because I have always been taught never to touch a thing until the officers arrive; I was touching her, but only in an effort to stop the blood; I was not touching everything else in that shop. I walked right back there where she was; I didn't move from that place until the ambulance came, and then I

walked out into my shop to wash up. I absolutely was [fol. 175] paying special attention to where I put my hands to see that I didn't touch anything besides Miss Clifton, while I was in that shop. There is one thing I did do: Her neck was swelling, and as she had a brown velvet band around her neck, I untied that and threw it up on the counter, and the little velvet band was shown in one of the photographs that was in the paper.

Betty Jane's dress, when she was turned over, was okay, so far as I am concerned; I mean, it was not torn, was not ripped, wasn't dirty, wasn't messed up; it was down. Those ballet skirts, they can flip up in the back and yet remain down in the front. I saw the little girl with her dress up, lying on her stomach. I didn't pay much attention to her after her father turned her over, except to keep putting towels to her head; her dress was down in front; I saw nothing at all of her undergarments from the front.

Re-direct examination.

Before her father turned Betty Jane over, I observed all of the back part of her body, and I saw no blood emitting from any part of her body except from her head; the only place I observed blood was from her head. When I first saw her, she was on her face, and the dress was up over her back, and her whole back part was exposed, to her waistline; I saw all of the lower part of her buttocks. Her underclothing was absolutely intact then. I did not see any blood emitting from her lower parts; the only blood I saw was from her head. When her father turned her over, I had no opportunity to observe the lower part of her body then.

I have no interest in this matter at all other than to come here and tell the truth, except I don't want the girl to have the stigma of rape on her for the rest of her life. You came in my shop to buy a record, I think it was Friday of last week, Mr. Price, and I didn't know you from Adam.

[fol. 176] T. D. Coppedge testified: I operate the Piedmont Photo Service. At the request of defense counsel I

took some photographs at the Clifton Radio Shop a few days ago, I believe day before yesterday.

The photograph you hand me is a photograph of a portion of the shop that I took. This is also one of the photographs I took over there on that occasion. This photograph shows a radio repair table and a mattress and springs underneath. The gentleman in the radio repair shop said that was the position of the cot; I don't know that he said when. I believe we asked him whether or not the wires were hanging down there or whether or not he wanted to remove them or something like that; he said those wires hung down there like that.

Cross-examination.

The cot was under the counter when I got there. I understood from the gentleman in the shop that that is where they always kept it or where it was on this day in question, anyhow.

(The photographs referred to were received into evidence as "Defendant's Exhibits Nos. 3 and 4.")

Gohen Jeffers testified: I went to Clifton's Radio Shop on Tuesday, for the purpose of making certain measurements at request of defense counsel. I have my notes with me. The distance from the work bench to the back wall of the radio shop is 6 feet 10 inches. I did not make a measurement of the distance from the top of the work bench to the floor. I measured the distance from the top of the work bench to the top of the cot; that distance was 2 feet. I did not measure the whole distance of the work bench from the wall to the entrance. I did not measure the length of the cot; I only measured the height of the cot. The distance from the floor to the top of the cot was 8 [fol. 177] inches, mattress and all. I did not measure the width of the shop in there, because I couldn't get around very well in there. There wasn't but one gentleman in there, and he didn't have time to help me; he offered to, after I got almost through, but he was busy before that; he told me it was between 12 and 14 feet wide.

Cross-examination.

I don't know anything about how the shop was arranged on the day in question; I only know about the day I was up there, which was last Tuesday. I didn't know anything about any adjustment of the bench to make more room for the desk up there; I didn't know anything about what had been done in there, or whether it was in there. From the work bench to the wall measured 6 feet 10 inches, and the cot was under the work bench. From the top of the cot with the mattress on it, it was 2 feet from the mattress up to the work bench, the top of the work bench. It was 8 inches from the floor to the top of the mattress, and 2 feet from the top of the mattress to the bottom of the work bench. I did not measure the distance from the bottom of the work bench to the top of the counter.

MAGGIE YOUNG testified: I live on West Twelve-and-a-Half Street, about a half a block from Clyde's mother. I have been knowing Clyde Brown ever since he was about 7 years old.

Q. Tell his Honor and the jury what kind of a person he is?

Objection—sustained—and defendant, in apt time, excepts—Exception No. ——.

Q. Do you know his general reputation?

A. All I know, he was good, as far as I know it.

[fol. 178] Q. First, answer, Mrs. Young, do you know his reputation?

A. Well, all I know, he was a good boy.

Q. Good boy?

A. I never knowed him to do nothing wrong.

Q. Quiet sort of person?

Objection—sustained—and defendant, in apt time, excepts—Exception No. ——.

I have known him ever since he was about 7 years old.

Cross-examination.

I don't know how long he has been left there from his mama. I don't know that he left there and went down to

live with Mattie Mae, his girl friend; I was working. I do not know about when it was he left his mother's. Every time I seen him he was at his mother's house. I don't know nothing about no girl. I didn't know anything about him coming by; the only time I ever seen him he was on his mother's porch. I didn't know about him being in High Point; I thought he was at his grandmother's house; I don't know where his grandmother lives—I understood she lived in Lexington; I don't know because I ain't never been down there. I don't know anything about any trouble; I didn't know he was in High Point. I don't know of any reputation he might have regarding High Point; I ain't never been to High Point.

Clyde worked down there at the produce place, is all I know. I don't know how long it had been since he had worked before this offense.

I ain't no friend; I just knowed him, that is all I know; I ain't no friend to nobody.

Defense counsel offered into evidence the Hospital Rec- [fol. 179] ords previously identified, marked "Defendant's Exhibit 1" and "Defendant's Exhibit 2."

The defendant rests.

STATE IN REBUTTAL

NANCY STRADER testified: On the 16th day of June of this year I was a nurse at the City Memorial Hospital, head nurse on Men's Ward, but when this emergency came in, Miss Cheek called me to the Emergency Room.

I saw Betty Jane Clifton shortly after she arrived; she wasn't undressed in the Emergency Room. At the time I saw her, her blouse was open; there was one button buttoned, but the rest of the buttons were open; her pants were bloody.

Q. What about the condition of the thigh region?

A. Well, her pants were bloody.

Q. Her pants were bloody?

A. Yes.

Q. What about any blood inside of her legs?

A. There were some smears, but her hands were bloody, too, so I don't know where it was from.

Mr. Price: I object to the leading.

The Court: Don't lead her.

Q. There were some smears inside?

A. Yes.

There is nothing else that I know about the condition of her clothing or her thigh region that I observed particularly, about which I haven't testified.

Cross-examination.

Betty Jane Clifton had on a skirt and a blouse; I haven't the slightest idea how many buttons there were to the [fol. 180] blouse; it was buttoned by one button, but I don't know how many buttons there were, whether it was a one-button or two-button blouse; I don't think hers had only one button; I know it had more than one button, but I cannot say how many buttons there were to the blouse. I don't know what kind of skirt that she had on; it was a cotton skirt; I don't remember what color it was, but I believe it was flowered. I don't know what kind of shoes she had on. She did not have on any hose.

I observed blood on her underclothing. I don't believe she had on a slip, but I am not certain about that. I think what I have been telling you is the truth. I don't know where the blood came from that I saw. The upper part of her body was pretty well saturated with blood.

I worked with her there in the Emergency Room. I did not stay with her until she was removed to a ward. She was carried to x-ray from the Emergency Room. I worked with her in the Emergency Room about two hours.

Q. Working with her two hours there, you can't give the Court any better idea than you have already given as to what her clothing consisted of?

A. Well, I wasn't interested in her clothing; I was interested in her condition.

It was partly my duty to observe that she had blood, as I have testified, on her panties. If there was any more blood I would have told you so. There was blood stains on her other clothing, on the upper part of her clothing.

I did not go to the ward with her at all. I do know who her nurse was. I was the head nurse on Men's Ward. My best impression is that that was a flowered skirt.

[fol. 181] Re-direct examination.

Betty Jane Clifton was never admitted to my floor. I believe the panties she had on were pink; I am not sure whether they were cotton or not; they were these little tight-fitting, short ones, very short. When I saw them, her panties were rolled from the top; I don't know whether that was in moving her or not.

Re-cross examination.

If they were rolled from the top, I don't know how they got rolled.

Captain Justus Tucker testified: I am the head of the Identification Bureau of the Police Department of Winston-Salem. I went to the Clifton Radio Shop on this day in question to make an examination for fingerprints. I arrived and reported to Capt. Burke. In consequences of Capt. Burke's instructions, I fingerprinted the entire shelf, the work bench, also underneath the work bench, that is, all wooden parts and surfaces; there were several large splinters of wood lying on the floor back of the bench, which I pow-ered and dusted; I dusted a small desk just in front of the work bench, just to the left going out, the drawer to that; I dusted approximately five or six radios. My results were negative; I found no fingerprints or any signs of fingerprints of anyone. The dust and grease and dirt nullified the effort of the powder; the powder would not reach the surface.

As to my training in fingerprint work, I have had 12 years of experience with the local bureau, both as working under Captain Simpson and also for the past eight or nine years in charge of that bureau. In addition to that, I belong to the North Carolina and International Association for Identification, past-president of the State organization. I have also received training from the Federal Bureau of Investigation at Washington. (Captain Tucker

was admitted by defense counsel to be a fingerprint expert, [fol. 182] and it was so found by the Court).

A hard, clean, smooth surface is required from which to get a fingerprint. I did not examine the gun for fingerprints; the gun was almost practically covered with blood, had a rusty, dirty appearance.

Cross-examination.

The gun came into my possession for examination at the Clifton Radio Shop. I went to the Clifton Radio Shop on the 16th in the company with Captain Burke and the investigating officers. I was one of the first officers to handle the gun.

Q. When you say it was almost covered with blood, you mean the butt, not the barrel? You don't mean the barrel of it?

A. There were red splotches and streaks of blood, yes, sir.

I did not dust the barrel and ejector and all that for fingerprints; that was covered with blood, too, the barrel, as well as the butt. I never took the fingerprints of the defendant; someone in my department took them; I don't know how many times they were taken, as I was out of the city; I don't know whether his fingerprints were taken more than once. I never went back to the Clifton Radio Shop after I had dusted unsuccessfully for fingerprints on the 16th.

The State rests.

DEFENDANT'S MOTION FOR JUDGMENT DENIED

At the close of the evidence, the defendant renews his motion for judgment as in the case of nonsuit. Motion denied and defendant, in apt time, excepts—Exception No. 24.

ADMONITION TO JURY

The Court: Gentlemen of the Jury, the evidence has been completed in the case. However, don't make up your minds about this case until you have heard the argument of [fol. 183] counsel, the charge of the Court, and retire to your room to make up your verdict. In the meantime,

don't discuss the case among yourselves; don't allow anyone to talk to you about it. Sheriff, take a recess until 1:45!

(Recess was thereupon taken to 1:45 P. M. at which time argument of counsel was begun).

(At 4:29 P. M. the Court addressed the jurors as follows):

The Court: Gentlemen, I will leave this matter up to you. We can finish this afternoon by running late—I mean, we can finish with the charge and give the case to you gentlemen, you can eat and come back and consider it tonight, or we will adjourn to in the morning and finish it in the morning. I want to handle it to your best convenience and satisfaction. If it is satisfactory with you, we will proceed this afternoon.

(The jurors indicated their desire to continue with the trial. Thereupon, the Court charged the jury as follows):

JUDGE'S CHARGE

Gentlemen, the defendant, Clyde Brown, is on trial on the following Bill of Indictment: "The Jurors for the State Upon Their Oath Present, That Clyde Brown, late of the County of Forsyth, on the 16th day of June, in the year of our Lord one thousand nine hundred and 50, with force and arms, at and in the County aforesaid, unlawfully, wilfully, and feloniously did assault one Betty Jane Clifton a female, and her the said Betty Jane Clifton, unlawfully, feloniously, by force and against her will did ravish and carnally know against the form of the statute in such case made and provided and against the peace and dignity of the State."

[fol. 184] To this charge the defendant has entered a plea of not guilty and asks that you return a verdict of not guilty in this case.

Now, a bill of indictment, gentlemen, is simply a written accusation, in which is set forth an alleged criminal offense, here, rape, and in which is named a person who is

alleged to have committed that offense, here, the defendant, Clyde Brown. The bill of indictment is merely the machinery by means of which a person is placed upon trial, and it is not evidence of any kind bearing upon the question of the guilt or innocence of the defendant. So the fact that the defendant is now on trial on this bill of indictment is not to be considered by you as evidence of any kind bearing upon the question of his guilt or innocence.

Now, under this bill of indictment you may return one of six verdicts, as you may find the facts to be under the law which the Court will give you. First, you may find the defendant guilty of rape as charged in the bill of indictment; second, you may find the defendant guilty of rape as charged in the bill of indictment with a recommendation for life imprisonment; third, you may find the defendant guilty of assault with intent to commit rape; fourth, you may find the defendant guilty of an assault with a deadly weapon; fifth, you may find the defendant guilty of an assault on a woman, he being a male person over the age of 18; and sixth, you may find the defendant not guilty.

Under his plea of not guilty the defendant is presumed to be innocent and the burden of proof rests upon the State to satisfy you fully from the evidence, beyond a reasonable doubt, as to his guilt. This presumption of innocence remains with and about the defendant throughout the trial, the State having the burden of satisfying you, beyond a reasonable doubt, as to his guilt before you may return a verdict of guilty of any offense whatsoever.

[fol. 185] A reasonable doubt, gentlemen, is not a vain or imaginary or fanciful doubt or a mere possibility of a doubt, but a reasonable doubt is a doubt based upon reason and common sense, arising from the evidence or lack of evidence in the case; and the Court charges you now that you will not return a verdict of guilty of any offense under this bill of indictment unless from your consideration of the evidence and the facts and circumstances disclosed by the evidence you have an abiding conviction to a moral certainty as to the guilt of this defendant.

The defendant, by his plea of not guilty, not only denies the charge or charges made against him, but also denies and challenges the credibility of each and every part of

the testimony upon which the State is seeking to obtain a conviction.

So it becomes your duty as a jury to weigh the evidence and determine therefrom what are the facts. In doing that you will pass upon the credibility or worthiness of belief of each witness and determine what weight, if any, you will give to the testimony of each witness. You may take into consideration the reasonableness or the unreasonableness of his testimony, his interest or lack of interest in your verdict, his manner or demeanor upon the witness stand, his knowledge or lack of knowledge or his opportunity for knowledge or lack of opportunity for knowledge concerning the subject of his testimony, or any other factors that suggest themselves to your good judgment and common sense to enable you to pass upon the credibility of the witness and determine what weight, if any, you will give to the testimony of that witness. You may believe all of what a witness says, you may believe a part of what a witness says, or you may believe none of what a witness says, that being a matter entirely for you to determine.

In this case the defendant did not go upon the stand to [fol. 186] testify in his own behalf. Our law is emphatic that a person on trial for a criminal offense may or may not testify in his own behalf, accordingly as he may elect or as his counsel may advise, and our law is equally emphatic that his failure to testify shall not create any presumption against him.

There has been some testimony in this case with reference to the good character of this defendant. Character testimony with reference to the defendant is substantive testimony, that is, it goes directly to the issue as to his guilt or innocence. A person of good character being less likely to commit an offense such as the defendant is here charged with committing.

The Court in this case, gentlemen, will not attempt to recapitulate or review all of the testimony in the case. The Court will refer to the testimony in stating the contentions of the State and the defendant. The Court cautions you, however, that you are the triers of the facts. You should consider all of the testimony in the case. If your recollection of the testimony differs from that of the

attorneys who have argued the case or from the Court, you take your recollection and not that of the attorneys nor of the Court. In stating the contentions of the parties, the Court cautions you that the Court is not expressing any opinion nor any intimation of opinion as to what the testimony might show, that being a matter entirely for you gentlemen to pass upon and determine.

The defendant in this case is charged with the crime of rape. Rape, at common law, is the unlawful, carnal knowledge of a woman under the age of ten years, forcibly and without her consent, or, as it is otherwise expressed, by force, or forcibly and against her will. Rape has also been defined generally as the act of having carnal knowledge, by a man, of a woman, forcibly and against her will, or without her conscious permission, or where permission has been [fol. 187] extorted by force or fear of imminent bodily harm. Three elements, at common law, were necessary to constitute the crime of rape, namely: Carnal knowledge, force, the commission of the act of carnal knowledge without the consent or against the will of the woman ravished.

Our Legislature has provided as follows in this connection: "Every person who is convicted of ravishing and carnally knowing any female of the age of twelve years or more by force and against her will, or who is convicted of unlawfully and carnally knowing and abusing any female child under the age of 12 years, shall suffer death: Provided, if the jury shall so recommend at the time of rendering its verdict in open court, the punishment shall be imprisonment for life in the State's Prison, and the Court shall so instruct the jury."

In accordance with that act, the Court instructs you now, gentlemen, that if from this evidence you should find this defendant guilty of rape, you may, at the time of rendering your verdict in open court, recommend life imprisonment, and that will automatically reduce the punishment for that offense from death to life imprisonment.

Our Legislature has also provided this in cases of this kind: "It shall not be necessary upon the trial of any indictment for the offenses of rape, carnally knowing and abusing any female child under twelve years old, . . . to prove the actual emission of seed in order to constitute

the offense, but the offense shall be completed upon proof of penetration only." While actual penetration is necessary in order to constitute this offense, no particular depth of penetration is required. The least penetration is sufficient, and the emission of seed is unnecessary. The least penetration of the person of a female against her will is sufficient to constitute rape. There are no degrees in the [fol. 188] crime of rape, but in proper cases the person charged in the bill of indictment may be acquitted of the capital felony and convicted of a less degree of the same crime. The term "proper case" is used to indicate those instances which the law and the facts will warrant a conviction of a lesser offense of the crime charged.

In this case, Gentlemen of the Jury, the State argues and contends that you should return a verdict of "Guilty of rape as charged in the bill of indictment," the State arguing and contending that on this 16th day of June 1950, that Betty Jane Clifton was in charge of her father's radio shop here in the City of Winston; that shortly before or about the noon hour this defendant entered the shop; that he attempted to take a pocketbook or did take a pocketbook from a desk drawer there on the premises; that he was detected in taking it and that Betty Jane Clifton then screamed; that this defendant then took hold of Betty Jane Clifton's throat with his left hand and that he pushed her down, holding her with his left hand around the throat and that with his right hand he pulled her underclothing down and at that time, as the State argues and contends, the defendant inserted his male organ into the female organ of Betty Jane Clifton, that he pushed a number of times; that it kept slipping out and he kept re-inserting it until he was finally satisfied.

The State arguing and contending that the defendant then started to leave the Clifton Radio Shop; that as he started to leave the young girl, Betty Jane Clifton, screamed; that thereupon he went back and hit her a number of licks with the rifle which has been introduced in evidence in this case, the State arguing and contending that the defendant, after he had committed the crime of rape, attempted to and intended to, so the State argues

and contends, kill the prosecuting witness so that he would not later be recognized.

[fol. 189] The State arguing and contending that shortly thereafter, the father of Betty Jane Clifton found her lying on the cot in the radio shop with a mattress thrown over her; that she was immediately taken to the hospital; that she was severely, painfully, and critically injured, as the State argues and contends; that she remained in the hospital for a period of about a month in a semi-conscious condition, remaining in the hospital until about August 10, when she was discharged.

The State arguing and contending that by reason of those blows inflicted upon her at that time that she suffered a lapse of memory and does not know what happened to her on this occasion, the State arguing and contending, however, that the evidence in this case is sufficient to satisfy you, from this evidence and beyond a reasonable doubt, that this defendant did actually rape Betty Jane Clifton on this occasion, the State arguing and contending that the statement made by the defendant, himself, is sufficient for that purpose, the State arguing and contending that the defendant admitted that he placed his private organ into or against that of the prosecuting witness, Betty Jane Clifton, and that he did this a number of times, and that after placing it therein that he pushed against her and that as it slipped out that he re-inserted it.

The State arguing and contending that in addition to the statement of the defendant that Dr. Dale, a practicing surgeon, who at the time was Assistant Resident Surgeon at the City Memorial Hospital, saw Betty Jane Clifton soon after she was taken to the hospital; that shortly after arriving there, within some three hours, that he made some examination of her female organs; that at that time she was bleeding, bright blood trickling from her female organs; that in his opinion as a medical expert that there had been a penetration by some object into her female [fol. 190] organ.

The State further arguing and contending that at the same time the nurse, Miss Strader, who was on duty in the Emergency Room at the Hospital, saw Betty Jane Clifton;

that she had blood on her underclothes, on her pants; that she had smears of blood upon her legs;

The State further arguing and contending that Dr. Dale on his preliminary examination when she arrived at the hospital, found bruises on the inside of her legs; that he found bruises upon her hips as well as the blows or wounds which he found about her face and head, skull fracture, fracture of the jaw, and the other injuries which he has described; the State arguing and contending that no further thorough examination was made at that time because of the fact that the girl's condition was so critical that the doctors and nurses were more interested in saving her life at that time than in making any further examination to determine whether or not she had been raped;

The State arguing and contending that some eight days later, on the 24th day of June, that a thorough examination was made by Dr. Goswick; that at that time a laceration was discovered and her hymen was found to have been punctured and that from this examination that Dr. Goswick is of the opinion that there had been a penetration;

The State, therefore, arguing and contending that based upon the statement of this defendant, based upon the testimony of the two doctors and the nurse, that you should be satisfied, and satisfied beyond a reasonable doubt, that there was a penetration;

The State further arguing and contending that the statement as finally given to the officers by this defendant, is true; the State arguing and contending that it has been checked as to the various details recited by the defendant; [fol. 191] that this defendant was warned of his rights; that he was told that he need not make a statement unless he desired to do so, that it could be used in court for or against him, but that, voluntarily, he made various statements, first denying any connection with the crime whatsoever; next, admitting that he had been there but denying any purpose or any act other than the purpose and act of taking what money he could find; finally, as the State argues and contends, sending for the officers and telling them that he had not told them the truth, that it was preying upon his mind and that he wanted to tell the complete story; the State arguing and contending that at that

time he did tell a full and complete story and that that story represented the true facts in this case; that he told where the pants were hidden, and that as the result of that the pants were found where he said that they were hidden, and that the pants were examined by an agent of the Federal Bureau of Investigation and human blood stains were found upon said pants; that he told where the pocketbook was hidden; that no person other than the one who actually hid the pocket book would have been in position to have told where it was; that it was hidden in a bucket of water, held down by a rock, in the weeds near a fence at his mother's place, and that the officers went there and found the pocketbook hidden as described by the defendant, and that that pocketbook has been identified by Betty Jane Clifton as being the pocketbook which she had with her on this occasion;

The State, therefore, arguing and contending that the story of the defendant is corroborated by the finding of these objects in the places where he says he had left them;

The State further arguing and contending that the defendant's actions showed on this occasion that he was guilty of a more serious crime than that of larceny; that had he [fol. 192] gone there only for the purpose of stealing the pocketbook and what money he could find and had he only stolen the pocketbook, that he would not have attempted to have killed or permanently disabled Betty Jane Clifton, as he stated he did, but that he would simply have snatched the pocketbook and run; that he would not have committed, as the State argues and contends, such a serious and such a dangerous assault upon the prosecuting witness simply to hide a crime of larceny, but that the assault and the infliction of the blows was caused by a desire on his part to hide a more serious crime and to avoid detection of that crime, that crime being, as the State argues and contends, the crime of rape;

The state further arguing and contending that this defendant would not have taken such care to have dyed his shoes, to have hid his pants, and taken the other steps which he did take, as the State argues and contends, to avoid detection for the simple crime of larceny;

The State further arguing and contending that this last

statement which was testified to by the officers, was made at the request of defendant, himself; the State arguing and contending that this defendant became worried, that his conscience was bothering him, and that he decided to get it off his mind, and, thereupon, sent for the officers and made the statement as testified to by the officers some time after the warrant had actually been served upon him;

The State, therefore, arguing and contending, gentlemen of the jury, that this defendant on this evidence is guilty of rape and that you should return a verdict of guilty of rape as charged in the bill of indictment.

The defendant, on the other hand, argues and contends, that you should return a verdict of not guilty, the defendant arguing and contending that he has not had all the [fol. 193] advantages that some others have had; that he has not had the education that others have had, and that he was in a helpless position; that he was in jail; that he was kept in jail for a number of days without any charges being preferred against him; that he had no attorney or opportunity to confer with an attorney, and that he was held in jail from about the 19th day of June until about the 24th before any charges were actually placed against him; that during that time he was questioned and questioned at length by various officers, officers of experience and intelligence, and that due to his lack of education, due to his ignorance about matters of this kind that various statements were taken from him; that in many instances that his answers were suggested to him, and that these various statements were the results of long and skillful questioning and were taken from him because of the fact that he was not capable of defending himself against the accusations and claims of these various experienced officers who questioned him time after time during that period of time;

The defendant further arguing and contending that the officers could very easily be mistaken about some of the statements which they say this defendant has made; that various statements were made; that the officers have testified that various conflicting statements were made, and that it is as much your duty to consider one of those statements as it is your duty to consider another; that the defendant,

at all times, and in all statements, insisted that he only went to this radio shop for the purpose of stealing money therefrom; that he had taken money therefrom, the sum of about $5.00, I believe, prior to that time; that he attempted to call Betty Jane Clifton or did call her on that occasion, attempting to get her across the street, in the shop across the street, and trying to delay her there at the telephone so he could slip into the radio shop and get what money he could find in her absence; the defendant arguing [fol. 194] and contending that had he had any idea or any notion or any plan to commit the crime of rape, that he would not have been trying to get her away from this shop, but, to the contrary, he would have been attempting to get her to remain at the shop; the defendant arguing and contending that he only went there, if he went there at all, for the purpose of getting some money; that his girl was planning a party for that night and that he was attempting to raise some money to help buy the refreshments for the party; that to corroborate that fact, that he had his radio with him that day; that he was attempting to get the radio repaired so it would be of some value at a pawn shop so that he could pawn it and raise some money on the radio; that, as a matter of fact, that he did later pawn the radio for the purpose of raising some money;

The defendant arguing and contending, therefore, he had no idea in his mind on this occasion except to try to get some money there from this radio shop; the defendant arguing and contending that he did that, that was the first act which he did after going into the shop, that he seized this pocketbook; that he then attempted to flee but that the girl obtained a rifle, and that his only motive in striking her at any time was to get away, to get out, away from the place before he was detected in there; the defendant arguing and contending that his behavior on this occasion might have been foolish, but that he did not, at any time, attempt to rape or otherwise molest Betty Jane Clifton other than by the blow which he inflicted upon her;

The defendant arguing and contending that there are a number of discrepancies in the case about this matter of rape; that this defendant is not a rapist; that Mrs. Gross-

man, who the defendant argues and contends was a friend to Betty Jane Clifton and who was only some thirty feet away across the street when this matter occurred, imme-
[fol. 195] diately went to the scene, before any officers arrived; that she has no interest or no motive to protect this defendant, but, to the contrary, she is a friend of Betty Jane Clifton and would naturally be inclined to testify favorably to Betty Jane Clifton; the defendant arguing and contending that she was the first one there who actually noticed anything about the girl; that at that time she saw her; that she had an opportunity to see her, an opportunity to examine her; that she was working on her, trying to stop the flow of blood from the injuries to her head; that she saw her underclothing; that her underclothing was pulled up in its normal position, and that there was no blood on her underclothing at that time, the defendant arguing and contending, had he raped this Betty Jane Clifton, as the State contends, that her clothes would have been torn or in disarray; that there would have been blood upon them, and that this would have been discovered by Mrs. Grossman when she was there immediately after it was discovered that Betty Jane had been injured; the defendant further arguing and contending that had Betty Jane Clifton been raped, as alleged by the State, that there would have been dirt, there would have been blood upon her panties or underwear and upon her skirt; the defendant arguing and contending that these articles of clothing were in the possession of Betty Jane Clifton and that they have not been exhibited to you gentlemen during the course of this trial; the defendant arguing and contending that had there been blood upon them, as testified by some of the witnesses, that they would have been introduced in evidence here for your inspection; the defendant further arguing and contending that had he been down on the floor in the act of raping or attempting to rape Betty Jane Clifton, that there would have been dirt upon the knees of the trousers, which were light colored and which have been exhibited to you; that some of the officers have testified that the place was dirty, greasy, that no fingerprints were
[fol. 196] available because of that fact, and that certainly,

had this defendant been on the floor, that there would have been some markings to indicate that on the knees of his pants;

The defendant further arguing and contending that had this crime been committed, as the State alleges, that some fingerprints of this defendant would have been found on or about this scene, and that although a careful examination was made, that no such prints were found;

The defendant further arguing and contending, gentlemen of the jury, that this boy is a boy of good character; that his neighbors have so testified, and that the State has not sought to rebut that testimony; the defendant arguing and contending that a man of good character in his community would not have attempted to commit the crime as alleged by the State in this case;

The defendant further arguing and contending that under the law in this State that the burden of proof is upon the State to satisfy you, beyond a reasonable doubt, as to the guilt of this defendant; the defendant arguing and contending that due to these vital missing elements in this case, due to the discrepancies in the stories of the witnesses who have testified for the State, that there is enough to create in your mind a reasonable doubt about his guilt and that you should give him the benefit of that doubt and acquit him in this case; the defendant arguing and contending that, at the most, you should only find him guilty of an assault with a deadly weapon or with an assault on a female, he being a male person over 18;

The defendant, therefore, arguing and contending, gentlemen of the jury, that by your verdict you should not take the life of this defendant, but, at the most, that you should only find him guilty of a misdemeanor, that is, an assault, so that he might be punished for what he actually did on [fol. 197] that occasion rather than to be punished for some fanciful happenings which this defendant argues and contends did not happen, that is, the crime of rape, this defendant arguing and contending that he is not guilty of rape, that, at the most, he is only guilty of an assault on a female.

Gentlemen, those are some of the contentions of the parties. This case has been ably argued to you by attor-

neys for both the State and the defendant, and they have called to your attention other contentions which they deem appropriate to their position in the matter.

With respect to the charge of rape in the bill of indictment, the burden of proof rests upon the State to satisfy you, from the evidence, beyond a reasonable doubt, first, that the prisoner, Clyde Brown, had carnal knowledge of the prosecuting witness, Betty Jane Clifton; second, that he had such carnal knowledge without the consent or conscious permission of the said Betty Jane Clifton, and that he had such carnal knowledge by force or forcibly and against the will of the said Betty Jane Clifton. So your inquiry will be, therefore: Did the prisoner, Clyde Brown, have carnal knowledge, that is, an act of sexual intercourse—these two terms being synonymous—with the prosecuting witness? Did he have such carnal knowledge without the consent or conscious permission of Betty Jane Clifton? Did he have such carnal knowledge by force or forcibly and against the will of the said Betty Jane Clifton?—remembering what the Court has told you about the necessity, gentlemen, for a penetration by the male organ into the female organ to constitute this offense. You must find and find beyond a reasonable doubt, that there was a penetration, no particular depth of penetration being required, the slightest penetration being sufficient.

So I charge you, gentlemen, that if you find from the evidence and beyond a reasonable doubt that on the 16th day [fol. 198] of June 1950, the prisoner, Clyde Brown, had carnal knowledge of the prosecuting witness, Betty Jane Clifton; and that he had such carnal knowledge without the consent or conscious permission of the said Betty Jane Clifton, and that he had such carnal knowledge by force or forcibly and against the will of the said Betty Jane Clifton, then I charge you that the defendant would be guilty of rape, and if you so find, it will be your duty to render a verdit of guilty of rape against the defendant as charged in the bill of indictment. If you fail so to find, it will be your duty to render a verdict of not guilty; or, if upon a fair and impartial consideration of all the facts and circumstances in the case you have a reasonable doubt in

your mind as to the guilt of the defendant of the crime of rape, it will be your duty to give the prisoner the benefit of such doubt and acquit him on that charge—bearing in mind what the Court has told you, that if you should find this defendant guilty of rape, you may at the time of rendering your verdit in open court recommend life imprisonment.

If you find the defendant guilty of rape, you need not consider whether he is guilty or innocent of any of the lesser offenses which have been referred to and to which I have called your attention; but if you find him not guilty of the crime of rape, it will be your duty to consider and determine whether he is guilty of an assault with intent to commit rape on the said Bett, Jane Clifton.

An assault, gentlemen, is an offer or attempt by force or violence to do injury to the person of another without striking him. A battery is the carrying of the threat into effect by the infliction of the blow, it being without the consent of the person on whom the offer of violence is made or who actually received the blow, the combination of the two being what the law denominates assault and battery. So an assault with intent to commit rape is an assault [fol. 199] made by a man upon a woman over the age of 12 years, with intent to gratify his passion or to have carnal knowledge of her, at all hazards, forcibly and against her will, and notwithstanding any resistance on her part. The burden of proof with reference to this charge in the bill of indictment rests upon the State to satisfy you from the evidence, beyond a reasonable doubt, first, that the prisoner, Clyde Brown, assaulted the prosecuting witness; second, that he assaulted her with intent to gratify his passion or to have carnal knowledge of her, at all hazards, forcibly and against her will and notwithstanding any resistance on her part.

So you will see that it is encumbent upon the State not only to satisfy you beyond a reasonable doubt that the prisoner assaulted the prosecuting witness, but that he assaulted her with intent to have carnal knowledge of her in the way and manner that I have already indicated.

Now, Gentlemen, the intent to commit a rape is the intent which exists in the mind of the man at the time he

committed the assault, to gratify his passion or to have carnal knowledge of her, at all hazards, forcibly and against her will and notwithstanding any resistance on her part. Intent is an act or emotion of the mind, seldom, if ever, capable of direct or positive proof, but it is arrived at by such just and reasonable deductions from the acts and facts proven as the guarded judgment of a reasonably prudent and cautious man would ordinarily draw therefrom. It is a mental act which may take place but remain confined in the mind which conceives it and never be susceptible of proof unless it is evidenced by the act, conduct or declarations of the party which betrays it, and it is usually shown only by acts and declarations and circumstances known to the party charged with the intent.

So I charge you, gentlemen, that if you find from the evidence and beyond a reasonable doubt that on the 16th [fol. 200] day of June 1950, the prisoner, Clyde Brown, assaulted the prosecuting witness, Betty Jane Clifton, she being a woman over the age of 12 years; that he committed said assault with intent to gratify his passion or to have carnal knowledge of the said prosecuting witness, at all hazards, forcibly and against her will and notwithstanding any resistance on her part, then I charge you that the prisoner would be guilty of an assault with intent to commit rape, and if you so find, beyond a reasonable doubt, it will be your duty to render a verdict of guilty against the prisoner for an assault with intent to commit rape, as charged in the bill of indictment. If you fail so to find, it will be your duty to render a verdict of not guilty as to that charge; or, if on a fair and impartial consideration of all the facts and circumstances you have a reasonable doubt in your mind as to the guilt of the defendant on that charge, you should give him the benefit of that doubt and acquit him as to that charge.

If you find the prisoner guilty of an assault with intent to commit rape, you need not consider whether he is guilty of an assault on a woman or an assault with a deadly weapon; but if you find him not guilty of an assault with intent to commit rape, then it will become your duty to determine and decide whether he is guilty of an assault

upon a woman, he being a man over the age of 18, or whether he be guilty of an assault with a deadly weapon.

I have already defined assault as being an offer or attempt by force or violence to do injury to the person of another. This is the generally approved definition of a simple assault. The essential difference between a simple assault committed upon the person of a man and the person of a woman is that the law provides a different punishment for an assault committed by a male person over the age of 18 years upon a woman.

[fol. 201] A deadly weapon, gentlemen, is not one that must kill, nor is it one that may kill. It does not depend upon the fact as to whether death ensues from the use of such weapon or not, but the size and nature of the weapon, the manner in which it is used, the size and strength of the party using it, and the person upon whom it is used —these must all be taken into consideration by the jury in determining whether it is a deadly weapon or not. A deadly weapon is one that would likely produce death or great bodily harm, used by the defendant in the manner in which it was used. In short, a deadly weapon is any instrument which is likely to produce death or great bodily harm, under the circumstances of its use, and where it may or may not be likely to produce such results, according to the manner of its use or the part of the body at which the blow is aimed, the alleged deadly character of the weapon is one of fact to be determined by the jury.

So I charge you that if you find from this evidence and beyond a reasonable doubt that on the 16th day of June 1950, the prisoner, Clyde Brown, committed an assault on Betty Jane Clifton with a deadly weapon, as I have defined those terms to you, then it will be your duty to render a verdict of guilty against the defendant for an assault with a deadly weapon. If you fail so to find, it will be your duty to render a verdict of not guilty on that charge, or, if on a fair and impartial consideration of all the facts and circumstances in the case you have a reasonable doubt in your mind as to the guilt of the defendant on that charge, then it will be your duty to give the defendant the benefit of that doubt and acquit him on that charge.

If you find the defendant guilty of an assault with a deadly weapon, you need not consider whether or not he is guilty of an assault on a woman, he being a male person over the age of 18; but if you find the defendant not guilty [fol. 202] of an assault with a deadly weapon, it will be your duty to consider whether or not he is guilty of an assault upon a woman, he being a male person over the age of 18 years of age and, in that connection, if you find from the evidence and beyond a reasonable doubt that on the 16th day of June 1950, the prisoner, Clyde Brown, committed an assault on the prosecuting witness, Betty Jane Clifton, as I have heretofore defined an assault to you, then it will be your duty to render a verdict of guilty against the defendant for an assault on a female, if you are satisfied beyond a reasonable doubt that the prisoner is over the age of 18 years. If you fail so to find, it will be your duty to render a verdict of not guilty as to that charge; or, if on a fair and impartial consideration of all the facts and circumstances you have a reasonable doubt in your mind as to his guilt on that charge, it will be your duty to give the defendant the benefit of that doubt and acquit him as to that charge.

Gentlemen, when you retire to make up your verdict you should appoint one member of your group as a foreman to render the verdict in open Court when you have arrived at such verdict.

Mr. Price, Mr. Solicitor, is there anything else you think I should state to the jury?

Mr. Price: No, sir, I think of nothing else.

The Solicitor: No, sir.

The Court: The thirteenth juror may now be excused. You may be discharged. You will have no further connection with the case. You other gentlemen may retire and make up your verdict.

(The jury retired at 5:32 o'clock P. M. At 6:58 o'clock P. M. the jury was called into the courtroom, and at that time stated they had not yet agreed; that it was their wish [fol. 203] to have their evening meal and continue their deliberations thereafter rather than continue their delibera-

tions the following day. Whereupon, the Court instructed the jury as follows):

The Court: Gentlemen, remember the caution I have given you each time while you are having a recess. Don't discuss the case; wait until you come back to your room to continue your deliberations. Don't talk to anyone about the matter. Sheriff, take them out and come back at 8:15. That will give you time to eat.

(At 8:18 o'clock P. M. the prisoner and the jury being present in the Courtroom, the following proceedings were had):

The Court: Gentlemen, you may retire and resume your deliberations.

(The jury thereupon retired to resume deliberations. At 8:55 o'clock P. M. the jury returned to the Courtroom, each juror's name was called and each juror answered to his name, and the verdict was taken as follows):

VERDICT

The Clerk: Gentlemen, have you all agreed?
Mr. D. C. Smith, Juror: We have.
The Clerk: Who shall speak for you?

(Mr. D. C. Smith raised his hand).

The Clerk: What is your name?
Mr. Smith: Smith, D. C. Smith.
The Clerk: Prisoner, stand up! Jurors, look upon the prisoner and harken to his cause. What say you for your verdict? Is he guilty of the rape and felony whereof he stands indicted, or not guilty?
[fol. 204] Mr. D. C. Smith: Guilty, as charged in the bill of indictment.
The Clerk: You find the defendant guilty. So say you all?
Mr. D. C. Smith: Yes. (The Jurors nodded their heads).

(Whereupon, at the direction of the Court, the jury was polled, each juror individually answering to his name and stating the verdict found is his own and that he still assents thereto).

The Court: Sheriff, remand the prisoner to jail. The Court will pass sentence tomorrow morning.

[fol. 205] (After convening of Court the following morning, and at approximately 9:50 A. M. the following proceedings were had, the prisoner being in the Courtroom):

The Solicitor: Your Honor, as Solicitor for the State, I, at this time, pray judgment in the case of State v. Clyde Brown.

The Court: Clyde Brown, stand up! It becomes my duty at this time to impose sentence in this case. Before doing so, do you have anything that you want to say, any statement that you want to make?

Mr. Price: Your Honor, may I make some statements?

The Court: Go ahead.

MOTION IN ARREST OF JUDGMENT, OVERRULED

Mr. Price: If your Honor please, this, of course, is a motion in arrest of judgment. I want to call to your Honor's attention that at the close of the hearing on my motion to quash the bill of indictment I think there were certain facts found by the Court, among those facts, as I recall it, the Court found that the County Commissioners and those officers charged with the duty and responsibility of preparing the jury list prepared and used as the basis for the jury list the tax list, or something to that effect. In fact that was, I believe, the specific finding. I wanted to make this request of the Court, which is a predicate for the motion in arrest of judgment, and that is that the Court find the additional fact that the jury commissioners did not prepare and hand over to the Clerk of the County [fol. 206] Commissioners a list of other qualified citizens whose names do not appear on the tax list as required by General Statute 9, subsection 1. I will read that, if your Honor please. I think it is germane, and I don't think that the County Commissioners or the Sheriff or anyone has

any discretion in the matter; I think it is mandatory. "The Boards of County Commissioners for the several counties at their regular meeting on the first Monday in June, in the year 1905, and every two years thereafter, shall cause their clerks to lay before them the tax returns of the preceding year for their county, from which they shall proceed to select the names of all such persons as have paid all the taxes assessed against them for the preceding year." Now, let me stop right there, if your Honor please, and turn over to the amendment of 1947 and read what was added. This is Chapter 9, Subsection 1, reading as follows: "The Boards of County Commissioners for the several counties, at their regular meetings on the first Monday in June in the year of 1947, or the jury commissions or such other legally constituted body as may in the respective counties be charged by law with the duty of drawing names of persons for jury service, at the times of their regular meetings, and every two years thereafter, shall cause their clerks to lay before them the tax returns for the preceding year for their county, and a list of names of persons who do not appear upon the tax lists, who are residents of the county and over twenty-one years of age, from which lists the Board of County Commissioners or such jury commissions shall select the names of such persons who reside in the county who are of good moral character and have sufficient intelligence to serve as members of grand and petit juries."

Now, that was not done. It was admitted that it was not done by all of the witnesses who came to the stand: Mrs. Ayers and Mr. Click, I believe, who prepared the list from the tabulating machine in the tax office—they [fol. 207] all admitted that the list they used was the tax list. I am asking that your Honor find as a fact that they did not follow the law, or just find as a fact that they did not add to the list. I don't want to impose any burden on the Court unnecessarily, but since it is a fact, since it was admitted in open Court that they did not prepare this additional list from other citizens whose names do not appear on the tax list, I think it is imperative, if your Honor please, that that appear as a fact found by this Court, as a basis for any action that might be taken on

behalf of the defendant later on. So that formally, if your Honor please, I make the motion in arrest of judgment, which motion is predicated upon that special request to the Court, and ask that that go into the record.

The Court: Motion overruled.

To the ruling of the Court, the defendant, in apt time, excepts—Exception No. 25.

Mr. Price: All right. I also want to make a motion, if your Honor please, in arrest of judgment on the ground that the jury commissioners have violated the law. I think that I will just state it more or less in a blanket way, that the jury commissioners have violated the law in that they have discriminated against qualified citizens of Forsyth County in the preparation of the jury list, the jury list from which the grand jury was drawn that found the bill of indictment in this case.

The Court: Motion overruled.

To the ruling of the Court, the defendant, in apt time, excepts—Exception No. 26.

MOTION TO SET ASIDE VERDICT OVERRULED

Mr. Price: Then, of course, if your Honor please, I make the other formal motion for judgment as of nonsuit at the close of the case.

[fol. 208] The Court: To set the verdict aside. Motion overruled.

To the ruling of the Court, defendant, in apt time, excepts—Exception No. 27.

The Court: I think that the facts found on the preliminary motion are sufficient to present the question, because there is no evidence that any other list was used other than the tax list, and I find as a fact in that finding that the tax list was the basis for the jury list, so there couldn't be any misunderstanding about it.

Mr. Price: Well, the only thing about it——

The Court: If that section is mandatory, then the grand jury was improperly drawn. I grant you that.

Mr. Price: The only reason I request it is the case of State v. Spellen, 229 NC 68. I think it is in point, and I believe that I might have a little trouble later on if that

fact is not found, because there was something said by the Supreme Court in that—— .

The Court: Well, I will review that finding, and if I don't think it is sufficient finding, I will make further finding. I want the question squarely presented.

Mr. Price: Very well.

JUDGMENT

The Court: Clyde Brown, stand up! Let everybody rise! Clyde Brown, you have been indicted, tried and convicted by a jury of your county of the rape of one Betty Jane Clifton without any recommendation of life imprisonment. The law prescribes, in General Statutes of North Carolina, Section 14-21, as amended, that the punishment for your crime is death. The Judgment of the Court, therefore, is that you be remanded to the common jail of Forsyth County and there remain until the adjournment of this Court.

[fols. 209-213] It is ordered that you be conveyed by the High Sheriff of said County of Forsyth to the Penitentiary of the State of North Carolina, and by him delivered to the Warden of said Penitentiary;

And it is further ordered and adjudged that you remain in the custody of said Warden until Friday, the 20th day of October 1950, and that on said day, between the hours of ten o'clock in the forenoon and three o'clock in the afternoon, that you be taken by the said Warden to the place of execution in said Penitentiary;

And it is adjudged that the said Warden then and there cause you to inhale lethal gas of sufficient quantity to cause death, and to continue the administration of such lethal gas until you are dead; and may God have mercy on your soul.

Sheriff, let the prisoner be remanded to jail. Remain standing, please.

(The prisoner was led from the Courtroom at 10:19 A. M.)

[fols. 214-216] [File endorsement omitted]

EXHIBIT 4 TO ANSWER—Filed July 5, 1951

IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

STIPULATION

It is stipulated and agreed that at least one negro in the person of Mrs. Mary Y. Matthews was drawn upon the Grand Jury for Forsyth County at the July 1950 Term of the Superior Court and that this negro woman was present and serving when the bill of indictment in the above styled case was returned by the Grand Jury at the September 1950 Term of the Superior Court for Forsyth County, and it is further stipulated and agreed that in the examination of the trial jury by counsel for the State and counsel for the defendant that at least one prospective negro juror was tendered to the defendant which juror was excused by counsel for the defendant.

This — day of November 1950.

Hosea V. Price, Counsel for Defendant. Walter E. Johnston, Jr., Solicitor.

[fol. 217] [File endorsement omitted]

EXHIBIT 5 TO ANSWER—Filed July 5, 1951

IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

DEFENDANT APPELLANT'S BRIEF

QUESTIONS TO BE DECIDED

1. Does GS 9-1, as amended, impose a mandatory duty upon the jury commission, or such other legally constituted body as may, under the law in Forsyth County, be charged with the duty of drawing names of persons for jury service,

to add to the tax list the names of other qualified residents of Forsyth County whose names do not appear upon the tax list, and thereafter select the names of the persons to serve as grand and petit juries?

2. Did the selection of the grand jury from a list of names prepared from names appearing on the tax returns alone and from which said list the names of other qualified citizens of Forsyth County, as required by the amended statute, GS 9-1, were purposely excluded, vitiate the indictment returned by said grand jury; and, hence, was the trial and conviction of the defendant pursuant to said indictment violative of the constitutional rights of the defendant? [fol. 218] 3. Did the Court err in refusing to grant defendant's motion to quash the bill of indictment, which said motion was made by and upon special appearance of the defendant before pleading to said indictment because the grand jury by which said indictment was returned was unlawfully constituted?

4. Did the Court err in failing to sustain the defendant's objection to certain questions asked and answers elicited before the jury, as set out in defendant's Exceptions Nos. 18, 19 and 20 (R pp 135, 143 and 159)?

5. Did the Court commit error in finding as a fact and ruling that certain statements made by the defendant, under the circumstances of this case, were freely and voluntarily made, and, therefore, amounted to an admissible confession on the part of the defendant?

6. Did the Court err in permitting the Solicitor to introduce certain photographs over defendant's objection without first requiring the Solicitor to lay the proper foundation?

7. Did the Court commit error in refusing to grant defendant's motion of nonsuit or dismissal at the close of the State's evidence, and again at the close of all the evidence?

8. Did the Court commit error in allowing defendant's motion to set aside the verdict and motion in arrest of judgment?

Statement

This is a criminal action which was tried before his Honor Dan K. Moore, Regular Judge and a jury, at the September 4, 1950, Term of Superior Court in Forsyth County. Before pleading to the bill of indictment, the defendant, by special

appearance, made a motion to quash the bill of indictment on the grounds that the grand jury returning the indictment [fol. 219] was unlawfully constituted. The grand jury returning the indictment in this case was selected from a prepared list of names drawn only from the tax returns, and no other names were added to those found on the tax returns of persons who reside in Forsyth County who are of good moral character and have sufficient intelligence to serve as members of the grand and petit juries as required by the amended statute, N. C. G. S. 9-1. After finding certain facts the Court overruled the motion.

The defendant was thereafter tried under a bill of indictment charging the crime of rape. The verdict of guilty as charged in the bill of indictment was returned by the jury. From said verdict and judgment sentencing the defendant to death in the gas chamber, the defendant appeals to the Supreme Court.

Facts

The State adduced evidence at the trial to the effect that sometime around noon, or shortly before that time, on June 16, 1950, while Miss Bettie Jane Clifton was in her father's radio shop, the defendant entered the shop on the pretext of transacting some business, and while there he raped the said Bettie Jane Clifton, and thereafter beat the said Bettie Jane Clifton over the head with a 22 calibre rifle until she was unconscious. The State also adduced evidence to the effect that after an indefatigable investigation on the part of the Detective Bureau of the Police Department of Winston-Salem, the defendant, Clyde Brown, was arrested on Sunday after midnight, June 19, 1950. Evidence at the trial further discloses that the defendant was held without bail and without any formal charge being made against him until June 24, 1950, and that during this time (from the time he was arrested until June 24, 1950) he was questioned repeatedly, and that defendant was not given a preliminary hearing until July 7, 1950.

[fol. 220] Argument

I

Exceptions Nos. 1, 2 and 3:

These exceptions constitute defendant's Assignment of Error No. 1, and relate to the denial by the court of the defendant's motion to quash the bill of indictment against the defendant for the reason that the indictment was returned by a grand jury unlawfully impaneled, or stated otherwise, that the grand jury returning the indictment against the defendant was unlawfully constituted in that it was not drawn from a jury list prepared in accordance with G. S. 9-1 and amendments thereto. Prior to 1947 the statute (G. S. 9-1) pertaining to the selection of juries in North Carolina provided as follows:

> "The board of county commissioners for the several counties at their regular meeting on the first Monday in June, in the year nineteen hundred and five, and every two years thereafter, shall cause their clerks to lay before them the tax returns of the preceding year for their county, from which they shall proceed to select the names of all such persons as have paid all the taxes assessed against them for the preceding year and are of good moral character and of sufficient intelligence. A list of the names thus selected shall be made out by the clerk of the board of commissioners and shall constitute the jury list and shall be preserved as such."

In 1947 the Legislature of North Carolina saw fit to amend this statute, and at the time the defendant went on trial in Forsyth County the statute providing for the making up of jury lists in North Carolina read, in part, as follows: (G. S. 9-1)

> "The board of county commissioners for the several [fol. 221] counties at their regular meeting on the first Monday in June in the year 1947, or the jury commission, or such other legally constituted body as may in the respective counties be charged by law with the duty of drawing names of persons for jury service—shall cause their clerks to lay before them the tax returns

for the preceding year for their county, and a List of Persons Who Do Not Appear Upon the Tax List, who are residents of the county and over 21 years of age, from which list the board of county commissioners—shall select the names of such persons who reside in the county who are of good moral character and have sufficient intelligence to serve as members of the grand and petit juries. A list of the names thus selected by the board of county commissioners or such jury commission, shall be made out by the clerk of the board of county commissioners or such jury commission, and shall constitute the jury list of the county and shall be preserved as such.

"The clerk of the board of county commissioners, or such jury commission, in making out the list of names to be laid before the board of county commissioners or such jury commission, may secure said lists from such sources of information as deemed reliable which will provide the names of persons of the county over 21 years of age residing within the county qualified for jury duty. There shall be excluded from said list all those persons who have been convicted of any crime involving moral turpitude or who have been adjudged to be non compos mentis."

The defendant contends and argues to this Court that the change in the statute by the 1947 Legislature imposed a mandatory duty on the jury commission of the several counties of the State of North Carolina, in making up jury lists from which grand and petit juries are to be drawn, to do more than refer only to the tax returns of the several [fol. 222] counties. On behalf of the defendant in this case it is argued and contended that the intendment of the 1947 amendment to G. S. 9-1 was to the effect that the jury commissions of the several counties of North Carolina were left with no discretion in the matter of preparing the jury lists from which grand and petit juries were to be drawn, except as reasonably may be inferred from the language of the statute and it is contended that it is not a reasonable inference to be drawn from said statute that the jury commissions may in their discretion omit the duty of adding to the tax returns a list of the names of persons who do not appear

upon the tax list who are residents of the county and over 21 years of age and who meet all the other requirements and qualifications prescribed by the statute.

Because of the lateness of this statutory change, this specific issue has not heretofore been presented to the Supreme Court of North Carolina for decision, so that a decision in this matter must basically rest on the legislative intent; and hence, the rules governing the general construction of the statutes and the obvious purpose of the statute, considering the evil that it sought to remedy, should, according to the contention and argument of the defendant, play an important role on the proscenium of the stage-setting for any consideration by this court of the question involved.

According to a long established and uncontroverted rule enunciated and laid down in a long line of decisions by this court, including such cases as *State* v. *Barco*, 150 NC 792; *Kearney* v. *Vann*, 154 NC 311; *Abernethy* v. *Board of Commissioners of Pitt County*, 169 NC 631; *State* v. *Earnhardt*, 170 NC 725; *State* v. *Burnett*, 173 NC 750; *Hunt* v. *Eure*, 188 NC 716, and *Norman* v. *Osborne*, 193 NC 791, the primary endeavor of the courts in construing statutes is to ascertain and give effect to legislative intent.

[fol. 223] In *Latham* v. *Latham*, 178 NC 12, the court stated: "A change in phraseology in dealing with the subject necessitates a presumption of a change in meaning."

Here the Legislature of North Carolina saw fit to change the statute affecting the making up of the jury lists, which for a long time had remained unchanged on the statute books of North Carolina. They changed the phraseology, changed the scope of its inclusiveness, and unequivocally intended to change the means or the method of compiling jury lists in the State of North Carolina.

If the jury commissions of the various counties of North Carolina, or such other legally constituted body, as may in the respective counties be charged by law with the duty of drawing names of persons for jury service, have the power to disregard this amendment to G. S. 9-1, as promulgated by the 1947 Legislature, then the work of the legislature as to this amendment is useless and is, therefore, rendered null and void.

To construe this statute as being merely directive or discretionary would be in contravention of a decision laid down

by this court in the case of *Manley* v. *Abernethy*, 167 NC 220, where the court said: "As between two possible constructions of a statute, that one should be adopted which effectuates rather than defeats the legislative purpose."

Hence, in considering G. S. 9-1, together with the 1947 amendment thereto, the legislative purpose was to make it possible for qualified unpropertied citizens to be given an opportunity to perform one of their democratic responsibilities and privileges by exercising jury duty.

The basic principle we have in mind is further enunciated in the following language of the Court in *McLeod* v. [fol. 224] *Board of Commissioners of the Town of Carthage*, 148 NC 77: "The law requires that, in the interpretation of a statute, we should give it that meaning which is clearly expressed, and if there is doubt or ambiguity we should construe it so as to ascertain from its language what was the true intention of the Legislature."

Is there anyone who would deny the wholesomeness of the above legislative purpose when it is to open up potential jury duty to all classes of citizens qualified and who meet the requirements of the law without regard to economic advantages of one class as against another class by reason of and evidenced by the one class owning real estate or being otherwise strategically situated so as to require members of that class to list for taxation? This Court indirectly asserted the same basic ruling when it declared in *Pittsburgh Life & Trust Co.* v. *Young*, 172 NC 470; a case involving statutory construction: "The statute could easily be evaded and nullified; and while this reason should not be considered, if the meaning is perfectly clear, so that there is no room for construction, it is a legitimate circumstance to be considered in ascertaining the meaning where construction is necessary."

Again, we urge and contend that to declare the 1947 amendment to N. C. G. S. 9-1 discretionary and merely directive would, unequivocally lay this act open to easy evasion and to all intents and purposes would render it null and void, or to say the least, would certainly render it voidable at the discretion of the county commissioners of the various counties, or such other legally constituted bodies as

may in the respective counties be charged by law with the duty of drawing names of persons for jury service.

In ascertaining the legislative intent, the wording of the statute is of primary consideration. This has been unambiguously and clearly stated in many North Carolina deci- [fol. 225] sions. In *Alexander v. Johnson*, 171 NC 468, the court had this to say: "The legislative intent must be gathered from the language of the statute, a consideration of the existing law, the evils intended to be remedied, and the remedy applied."

The court had this to say further in *Blair* v. *Board of Commissioners of New Hanover County*, 187 NC 488: "The legislative intent as gathered from the statute itself prevails over all other consideration."

And again, in *Nance* v. *Southern Railway*, 149 NC 366: "We have no power of right to strike the words out, or to construe them away . . . If the legislature has used language of clear import, the court should not indulge in speculation or conjecture for its meaning. In applying this rule the entire sentence, section or statute must be taken into consideration, and every word must be given its proper effect and weight."

We seriously contend and argue to this court that it is only sound judgment and common sense, and certainly not in the contemplation of any sound judicial system, to adopt a contrary position; and for the Legislature to pass an act and to have its compliance construed to be dependent on the whims, desire, feelings and emotions of those to whom the act was directed, is an absurdity, and thwarts the intention of the Legislature and tends to perpetuate the evil sought to be remedied.

While there is no need for any judicial statutory construction in this case, we think it wise to superficially examine what means of construction would be incumbent upon the Court if such a construction were necessary. In construing statutes there are certain prescribed steps which are taken by the courts. First, the one that has already been examined, i. e., legislative intent; secondly, the courts go to the wording of the statute and try to ascertain its meaning [fol. 226] from the language used therein.

In the case of *Mfg. Co.* v. *Turnage*, 183 NC 137, the court said: "The object of all interpretation or construction is

to ascertain the meaning and intention of the Legislature, to the end that the same may be enforced which must be sought for first of all in the language of the statute itself; for it must be presumed that the means employed by the Legislature to express its will are adequate to the purpose and do express the legislative will correctly."

In *Nance* v. *R. R.*, 149 NC 366, at pages 370 and 371, the court said: ". . . The object of judicial interpretation is to determine the legislative intent, and to this end words should generally be given their popular meaning if they have not acquired a meaning which is technical. It is only when the terms of the statute are ambiguous or of doubtful construction that the court may exercise the power of controlling the language in order to give effect to what they suppose to have been the real intention of the lawmakers. If the language is not ambiguous and the intent is plain, there is no reason for resorting to external circumstances as an aid to interpretation for in such case there is really no grounds for construction. We must, therefore, ascertain the intention of the General Assembly from the language of the acts."

There are many other cases in which this basic rule has been affirmed: *Board of Commissioners of Vance County* v. *Town of Henderson*, 163 NC 114; *Peoples Bank* v. *Loven*, 172 NC 666; *Whitford* v. *North State Life Ins. Co.*, 163 NC 223; *State* v. *Barco*, 150 NC 792.

The basic premise laid down in the above cited and quoted case is that unless there is ambiguity in the language of a statute the courts have no interpretive rights and are bound by the general and usual meaning of the words used in the statute under question.

[Vol. 227] The pivotal word in this statute (G. S. 9-1 as amended) is "SHALL." What is the meaning of shall when it is used in the manner employed in this statute?

According to Black's Law Dictionary, Third Edition, we find this definition: "As used in statutes, contracts, this word "SHALL" is generally imperative or mandatory." Webster's Collegiate Dictionary, Fifth Edition, the accepted and recognized authority of American English, gives us this definition: "'Shall,' when used in the second or third person, is expressive of some authority or compulsion on the speaker's part, as in 'thou shalt not kill'."

Our Blessed Saviour, Jesus Christ, saw fit to prescribe certain commandments which every human being desirous of everlasting life must keep. In stating these commandments He said throughout "Thou shalt not." The etymology of shall is shalt and, of course, thou has reference to the second person "you." Is there anyone naive enough to contend that "shalt" as used in the Ten Commandments is merely directive or that it leaves a discretion on the part of humanity in its observance of those Ten Commandments?

The appellant, therefore, argues and contends that the same imperativeness inherent in the word shalt in the Ten Commandments is as obviously present in G. S. 9-1 as amended in 1947, in the instance where the Legislature used the term shall in prescribing the method and rules for making up and preparing jury lists.

The wording of G. S. 9-1 prior to the 1947 amendment was: "The board of county commissioners . . . SHALL cause their clerks to lay before them the tax returns for the preceding year for their county, from which they SHALL proceed to select the names of all such persons as have paid all the taxes assessed against them for the preceding year, and [fol. 228] are good character and of sufficient intelligence."

It is not reasonable to presume that the statute prior to the 1947 amendment gave the county commission any discretion in having the tax list laid before them as the basis for the jury list. If it was in the discretion of the county commission to have or not to have the tax list laid before them for compiling the jury list, then the county commissioners could have invariably hand-picked the juries in every county in the State of North Carolina. It is not logical to conclude that the statute prior to its 1947 amendment was mandatory, and then conclude that the amendment to the statute was discretionary. In both the body of the statute and the amendment the word SHALL was used. It seems perfectly reasonable, plausible and logical that had the Legislature intended for the amendment to be discretionary, they would have deviated from the wording that had been held as mandatory through the years and used such a word as MAY, which is indicative of discretion. The defendant, therefore, contends and argues that the amendment to G. S. 9-1 gave a mandate to the county commissioners as strong,

as clear, and as unevasive as the mandate given such county commissioners in the statute of 1905.

As mentioned heretofore, we contend that there is no room for judicial construction of the statute because the intent of the Legislature is clear, and the general unambiguous language of the statute must be given its clear import according to the usual meaning of the words used therein. It is quite clear that the 1947 General Assembly of North Carolina imposed a duty upon jury commissions as to the manner in which jury lists are to be made up, which was mandatory. To conclude otherwise is in utter contravention of the general rules of statutory construction and is repugnant to the legislative intent.

[fol. 229] In this case the evidence is uncontradicted on the point that no outside names of qualified citizens were added to the tax list. His Honor, Dan K. Moore, Judge presiding, found this as a fact (R p 50). The defendant, therefore, argues and contends that the grand jury which returned a true bill of indictment and the petit jury which brought in the verdict were improperly and unlawfully drawn and impaneled, and that their improper and illegal status rendered the acts of both null and void. The appellant further contends that because of the above mentioned law and facts the trial court erred in denying the defendant's motion to quash the bill of indictment. The fact that the jury commission of Forsyth County, in preparing the master potention jury list, confined itself to the tax list, and failed to add to this list the names of other qualified citizens of Forsyth County, as required by G. S. 9-1, as amended, infinitely prejudiced the constitutional rights of the defendant, Clyde Brown. The appellant is a young man of very limited education, is not a property owner, and because of circumstances beyond his control, he lacks many of the advantages afforded most American youth. He occupies an economic status and is a part of a group or class of citizens which is not very well recognized in the social, political and governmental stream of life in this country. (R pp 192-193).

Apparently, the General Assembly took cognizance of this lack of recognition of the under-privileged portion of our citizenry in 1947, and made an attempt to alleviate this diabolical and dangerous practice. But the efforts of the

General Assembly were stripped of all hopes of fruition by the failure on the part of the jury commission of Forsyth County to abide the mandates of G. S. 9-1 in the matter of preparing and making up the jury lists from which the grand and petit juries concerned with the indictment and trial of the appellant were drawn. And as a result of this [fol. 230] total disregard for the legislative act, GS 9-1, as amended, the defendant has been prejudiced in his constitutional rights.

The basic concept of the jury system is that a man be tried by twelve others of his peer. The word "peer" means one of the same rank, quality, or of an equal match. Is the propertied the equal match of the unpropertied? Can a man who has never known the pangs of hunger and who has never worried about having the necessities of life, or who has been throughout his life well-fed, well-clothed and well-housed, judge understandingly a man who has through his entire life known the excruciating pangs of hunger, has been in constant fear of being unable to enjoy the bare necessities of life, shielded from the elements only by the four walls of a squalid hut, and, in short, enduring the most meager offerings of life?

To understand the emotional and mental attitude in a situation such as the one under consideration here, one needs to know or to have known similar circumstances and conditions. While perhaps there is little or no homology between Victor Hugo's main character, Jean Valjean in "Les Miserables," at the same time we think that it is more or less germane or timely to refer to the sociological aspect of that noted piece of literature to point out the fact that one never having the need to steal or rob cannot understand properly the psychological motive of the robber.

We, therefore, strongly contend that the appellant was denied the possible understanding attitude of citizens of Forsyth County of his same economic strata, by reason of the fact that all such persons were excluded from the list made up and prepared by the jury commission from which the grand and petit juries in the instant case were drawn.

The appellant also was prejudiced in another way by the failure of the Forsyth County jury commission to comply [fol. 231] with GS 9-1, as amended. In the Record (p. 23) is found a statistical report on the Forsyth County census.

In this report the Court will find the figures of poll tax listers for 1950. We find that there are 20,120 white and 2,987 Negroes. Bear in mind that these figures refer to poll tax listers. The ratio of poll tax listers, therefore, is almost ten to one, while the racial population ratio is about two to one. (R. p. 23) From these figures one readily sees how the jurors racially will almost invariably be disproportionate. Regardless of the fact that this might be the result of apathy or lethargy, it is the contention of the appellant that he should not be denied the possibility of pro rata racial representation on the jury, especially since the Legislature of North Carolina has seen fit to clearly, unequivocally and expressly give him that right by directing the jury commissions to use tax lists only as a basis or starting point in compiling jury lists and to add to that list all other qualified citizens in the county. See also *Cassell* v. *Texas*, 94 L. ed. 563.

II

Exception No. 17 (R. p. 133):

The appellant argues and contends that the Court erred in finding as a fact and ruling that the statements made by the defendant were freely and voluntarily given and that the defendant was in nowise physically mistreated, threatened or otherwise coerced. (R. p. 133) The defendant was arrested around 12:00 or 12:30 o'clock A.M. on June 19, according to the testimony of Detective Reid. (R. p. 96) The defendant was questioned repeatedly by Detectives Reid, Carter and others until he finally made a statement which was by the Court ruled to be a voluntary statement or confession. And no special effort was made to connect the defendant with counsel before he was subjected to repeated questioning. (R. pp. 98, 99 and 100) The defendant was [fol. 232] not charged formally until June 24, 1950, and was not given a preliminary hearing until July 7, 1950.

While we expressly refrain from charging against the Police Department of Winston-Salem any of the now famous shocking examples of police abuse, such as was the foundation and motivating factor behind such decisions as *McNair* v. *United States*, 318 U.S. 332; *Ashcraft* v. *Tennessee*, 322 U.S. 143, and *Anderson* v. *United States*, 318 U.S.

350, we strongly urge for the consideration of this Court that the defendant was coerced by the Police Department and that there was other conduct on the part of the Police Department of Winston-Salem which so influenced the will of the defendant that his confession was wholly involuntary and should not have been allowed as competent evidence in the trial of the defendant. (R. p. 117)

We also call the Court's attention to the Record (p. 110) with regard to the repeated examination of the defendant before he made a statement, and further invite the Court's attention to the fact that according to the Record (p. 110) the defendant was not fully advised as to his rights before he made a statement. Of course, the evidence is conflicting on this point, but we ask that the Court take into consideration the lack of intelligence on the part of the defendant as will certainly be revealed from a careful perusal of the whole record. We believe, therefore, and certainly argue the point that this case is almost on all-fours with the case of *Turner* v. *Pennsylvania*, 338 U.S. 6267, 93 L. ed. 1810. We ask the Court's indulgence while we briefly review the facts in the *Turner* case:

"For six months the Philadelphia police had been investigating the felonious death of one Frank Andres. At 10:30 in the morning on June 3, 1946, they arrested Aaron Turner, the petitioner, on suspicion of homicide and took him to the office of the Homicide Division at the City Hall. [fol. 233] The officers making the arrest had no warrant and did not tell the petitioner why he was being arrested. These officers began to question the petitioner as soon as they reached the City Hall Police Station. One of them examined the petitioner for three hours on that afternoon and again that night from 8:00 to 11:00 o'clock. From time to time other officers joined in the interrogation.

". ... On June 7, the day when a confession was finally obtained, questioning began in the afternoon and continued for three hours. Later that day the officers who had been present during the afternoon returned with others to resume the examination of the petitioner. Despite the fact that he was falsely told that other suspects had 'opened up' on him, petitioner repeatedly denied his guilt, but finally, at about 11:00, petitioner stated that he had killed the

person for whose murder he was later arraigned. At 9:00 o'clock the following morning the same police officers started to reduce his statement to writing, interrupted this process to bring him for a preliminary hearing before a Magistrate in the same building, and returned to the transcript of his statement which was completed by about noon.

"At the trial, petitioner objected to the introduction of his statement on the grounds that it was the product of police conduct of a nature condemned by our previous cases.

"The jury returned a verdict of guilty and recommended the death penalty. In deciding this case, the Court said: 'Putting this case beside the consideration set forth in our opinion in Watts v. Indiana, 338 U. S. 49, leaves open no other possible conclusion than that petitioner's confession was obtained under circumstances which made its use at the trial a denial of due process. We must, accordingly, reverse the judgment and remand the case.'"

[fol. 234]

III

Due Process of Law—Geographical Pattern of Enforcement

It is well settled in law that the term "*due process of law*" is not susceptible of exact or comprehensive definition. Its meaning has been developed in the cases by a process of judicial inclusion and exclusion. (See headnote, Vol. 16, Corpus Juris Secundum, page 566, Sec. 567).

Generally speaking, the purpose of the guarantee is to prevent governmental encroachment against life, liberty and property of individuals . . . and to secure to all persons *equal* and *impartial* justice. Plott Co. v. Ferguson Company, 163 S. E. 688; 202 N. C. 446.

In all seriousness, and yet with respectful submissiveness, appellant raises the question and wonders if there does not exist some kind of mysterious geographical pattern of enforcement among whose tenacles he has found himself inextricably fastened. Is not the failure on the part of the jury commission of Forsyth County to comply strictly with the law in the matter of selecting the grand and petit jury an integral part of this pattern? Can it be said that appellant has been the recipient of impartial justice and has been given the full benefit of the general law which is secured by laws operating on all alike? Praying that he will not appear

supercilious, appellant argues and contends that there is a pattern of enforcement, which, because of his racial identity, deprived him of equal protection of the law. It will, no doubt, be regarded by this court as being improper, or to say the least, not germane, but we earnestly ask the indulgence of the court that consideration be given to the editorial appearing in the Durham Morning Herald, on Thursday, October 5, 1950, which serves to answer the question in affirmative as to the existence of some kind of pattern of enforcement: [fol. 235] "A young Negro, charged with raping a white girl, received a fair trial in a North Carolina city the other day and he was sentenced to die in the gas chamber at Raleigh.

"A newspaper there congratulated the people of the town for the fact that the trial had proceeded without incident and with no attempt at violence against the Negro.

"One wonders if the South is such a land of violence that a fair trial for a Negro is unusual and that the absence of violence against him is a fit subject for editorial congratulations. This newspaper does not believe it.

"The case, however, does offer a subject for editorial comment—when taken with another case that was being tried at about the same time.

"In the second case, tried in another North Carolina town, a white man was charged with the same offense against a Negro woman. He was also charged with a second, lesser offense against her.

"The evidence against him on both counts apparently was as strong as that upon which the Negro was convicted. In addition to this, he had a bad record.

"This man, however, was allowed to plead guilty to the lesser offense and escaped with a prison sentence.

"Would he have had the same treatment if he had been a Negro and his victim a white woman? Would the Negro who was convicted of the crime against the white girl have had the same treatment if he had been a white man and she had been a Negro?

"These two cases cause one to wonder if justice is so indifferent to the color of a man's skin after all."

[fols. 236-237] Respectfully submitted, Hosea V. Price, Harold T. Epps, Attorneys for the Defendant, 13 East Third Street, Winston-Salem, N. C.

[fol. 238] [File endorsement omitted]

EXHIBIT 6 TO ANSWER—Filed July 5, 1951

IN SUPREME COURT OF NORTH CAROLINA

[Title omitted]

BRIEF FOR THE STATE

Statement

This is a criminal action tried before his Honor Dan K. Moore, Judge, and a jury, at the September 1950 Term of the Forsyth County Superior Court. The defendant, Clyde Brown, was charged in the bill of indictment with the rape of Betty Jane Clifton. (R. p. 8) The jury returned a verdict (R. p. 15) of guilty as charged in the bill of indictment, and from judgment pronounced upon the verdict, the defendant appealed to the Supreme Court of North Carolina.

Facts

On June 16, 1950, the defendant, Clyde Brown, a Negro man, went into the radio shop of Thomas E. Clifton on West Seventh Street, in Winston-Salem, and raped his daughter, Betty Jane Clifton, a high school girl in the eleventh grade. The victim of this assault, Betty Jane Clifton, was cruelly beaten and maltreated in a fiendish manner and was taken to the hospital where she remained unconscious and hovered [fol. 239] between life and death for many days. (See R. pp. 93, 60, 61, 62. See evidence of Dr. Dale on R. p. 70. See evidence of nurse Nancy Strader on R. p. 179). The defendant beat the victim, Betty Jane Clifton, with a rifle and perhaps other weapons, and there was no doubt but what she was raped because blood flowed from her private parts and soiled her underclothes, and doctors testified that penetration had been accomplished. (See evidence of Dr. Harry W. Goswick on R. p. 60 and Dr. F. P. Dale on R. p. 70). The victim, Betty Jane Clifton, remembered very little about what happened as will be seen from her evidence beginning on Record p. 78.

The defendant, Clyde Brown, was seen in the vicinity of the radio shop close to the happening of this event as will

be seen by the evidence beginning on Record p. 82. The defendant was arrested and held for some time for investigation. He told various stories of his whereabouts and persons he had seen and talked with, which were investigated patiently by the police officers of Winston-Salem and were found to be untrue. He finally sent for the officers of his own accord and admitted that he went into the radio shop and assaulted, beat and raped Betty Jane Clifton. As is customary in a case of this kind, the police officers gave evidence on the question of the competency of the defendant's confession, and the police officers likewise testified before the jury after the confession had been ruled upon, and the Judge found that the same should be submitted to the jury, all according to the practice that prevails in this State. For the various stories that the defendant told, as well as his confession, we refer the Court to the evidence of the officers beginning on R. p. 135 and extending continuously through R. p. 166.

The defendant, during this time, told the police officers where to find the clothes which he had worn on this occasion (R. p. 42); and he also told the officers where to find the billfold that belonged to the victim, Betty Jane Clifton, [fol. 240] and the officers went and found the billfold hidden in the place as related by the defendant. (R. p. 147)

Argument

The Defendant's Motion to Quash the Bill of Indictment

The defendant filed a motion to quash the bill of indictment, which will be found on Record p. 22. We submit that this motion to quash is not sufficient to meet the standard of even criminal pleadings which are very liberal in this State. Everything alleged in the motion to quash is in the nature of a conclusion; no facts are alleged to support the conclusions. The defendant simply says that the Grand Jury was selected in an unconstitutional manner in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States. The only definite thing he says in this motion to quash is that the Grand Jury was selected "with a view to and purpose in mind of systematically limiting representation thereon of Negroes or persons of African descent." The Court will see that

this is still a conclusion as the facts are not alleged, which, according to the contention of the defendant, constitute this limitation of persons of African descent. Even a motion to quash must follow some elementary rules governing pleadings.

Shreve v. U. S., 77 Fed. (2d) 2;
Colbeck v. U. S., 10 Fed. (2d) 401;
Whitman v. State, 122 So. 567 (Fla.);
State v. Ellington, 96 So. 529 (La.).

It is the holding in many jurisdictions that the grounds upon which the motion to quash is based must be set forth in some detail in the motion.

Boyd v. State, 143 N. E. 355 (Ind.);
People v. Damazoni, 223 P. 1003 (Okl.);
State v. Skinner, 230 P. 537 (Wyo.);
[fol. 241] State v. DeBoard, 194 S. E. 349 (W. Va.);
Ingham v. State, 172 N. E. 401 (Ohio);
Deibert v. State, 133 A. 847 (Md.).

We submit, therefore, that the defendant cannot merely say that the Constitution was violated and that the number of people of African descent were limited in their jury service and thereby proceed to offer any kind of proof that he desires. The Court will see that the defendant does not one time contend in this motion that G. S. 9-1 (Cumulative Supplement of 1949) is unconstitutional and invalid. The defendant gently drifts all through this whole trial and never once, even by means of a whisper, intimates that he contends that G. S. 9-1, as to the selection of a jury and making up the list, is invalid. The defendant even grows suspicious of his own tactics. He even feels himself that he has not said enough about the matter because on Record p. 205, after the case had been tried and the defendant found guilty, counsel for the defendant then, for the first time, begins to argue what proves to be now his concept of the real point in the case; that is, should G. S. 9-1 be construed as mandatory or directory. He now brings this before the Court on what he says is a motion in arrest of judgment. (See R. pp. 205, 206, 207).

We do not understand from the defendant's brief that he attacks G. S. 9-1 as being invalid on its face or as being

inherently unconstitutional, but if we understand his position correctly, he contends that the commissioners did not follow the provisions of the statute and that this resulted in an unlawful selection of the jury and in limiting the number of colored persons that could possibly be in the jury box.

Our Present Jury Selection Statute is to be Construed as Directory insofar as the Amendment of 1947 is Concerned.

[fol. 242] The defendant spends considerable time in his brief on the question as to whether it is mandatory or directory for the commissioners, when they are preparing the jury list, to have laid before them, in addition to the tax returns for the preceding year, a "list of persons who do not appear upon the tax list, who are residents of the county and over twenty-one years of age." The defendant says that the evidence on the motion to quash all shows that in making up the jury list, the commissioners used only a list of persons who appeared upon the tax list for the preceding year. We think the defendant's reasoning on this statute is not correct.

Previous to the amendment of 1947, all jurors were obtained from the tax list, and, in addition, such persons had to be of good moral character and of sufficient intelligence. Qualifications for jurors have been held to be constitutional and valid.

Strauder v. West Virginia, 100 U. S. 303, 25 L. Ed. 664.

Faye v. New York, 322 U. S. 261, 91 L. Ed. 2043

In the Faye case above cited, it was held to be constitutional and not a violation of the due process clause or a denial of the equal protection clause to establish Blue Ribbon juries in the State of New York.

It is quite apparent that what the amendment of 1947 did was merely to enlarge the sources of information from which the names of persons could be obtained who were eligible to serve as jurors. It is also clear that the county commissioners are not required to obtain names from all

sources and from all possible lists because in the second paragraph of the statute, we find the following:

> "The clerk of the board of county commissioners, or such jury commission, in making out the list of names to be laid before the board of county commissioners or such jury commission, *may secure said list* from [fol. 243] such sources of information as deemed reliable which will provide the names of persons of the county over twenty-one years of age residing within the county qualified for jury duty." (Emphasis added).

A reading of this excerpt shows that the commissioners can select the source of names which is by them considered reliable. The statute simply empowered the commissioners, if they desired to do so, to use other sources than the tax list which is the fundamental and basic source of names for jury duty.

It is to be noted that the statute, prior to 1947, required the commissioners to purge the jury box every two years on the first Monday in June, and in all of these requirements, the word "shall" is used. In spite of all this mandatory language, if the commissioners fail to meet and purge the box as required or in the case of many other irregularities, this jury statute has always been held by our courts to be construed in a directory fashion. There is no reason to think that the method of construction of the statute has been changed simply because it was amended to include other sources of information if the commissioners wished to consult these sources.

State v. Smarr, 121 N. C. 669;
State v. Perry, 122 N. C. 1018;
State v. Dixon, 131 N. C. 808;
State v. Banner, 149 N. C. 519;
State v. Fertilizer Co., 111 N. C. 658;
State v. Mallard, 184 N. C. 667.

In State v. Smarr, supra, the Court said:

> "Nor was there any force in the objection that the jury list was not revised (owing to delay in receiving the laws of 1897) on the first Monday in June, but at

the meeting of the commissioners on the first Monday in July or August. It does not appear that the prisoner was in anywise prejudiced thereby, and such require- [fol. 244] ments as to the manner or time of drawing jurors have always been held directory in the absence of proof of bad faith or corruption on the part of the officers charged with that duty. S. v. Stanton, 118 N. C. 1132; S. v. Fertilizer Co., 111 N. C. 658; S. v. Wilcox, 104 N. C. 847; S. v. Hensley, 94 N. C. 1021; S. v. Griffice, 74 N. C. 316; S. v. Haywood, 73 N. C. 437."

The whole matter is summed up in the case of State v. Mallard, supra, from which we quote extensively as follows:

"It seems to have been quite definitely decided by the court, in several cases, that the irregular action of the board of county commissioners, where there is no fraud or corruption, and no opportunity for fraud, on the part of the person interested, in drawing a jury not in strict accordance with the statute, does not invalidate the array.

"In S. v. Martin, 82 N. C. 672, the commissioners refused to put on the list of jurors names which were drawn because they thought too many were drawn from one section of the county, and, wishing to equalize the number among the different townships, they were put back in the box and others drawn in their stead. More was done, and of a more serious character, than was done here. The Court refused to allow the challenge of defendant's counsel to the array in that case. It appears to us that what the commissioners did in S. v. Martin, supra, departed further from the letter of the law and its substance or spirit than what was done by the commissioners of Brunswick in this particular case. There the commissioners, after drawing the scrolls, and knowing the names thereon, refused to put them on the jury list of their own accord. Here, however, the names already separated, or segregated, according to townships, were drawn by a child under ten years of age from a hat after they had been mixed up indiscriminately, and only that number [fol. 245] drawn and put on the list to which the township, as the commissioners verily believed, was entitled

according to its proportion of population. There could, therefore, be no opportunity or chance for fraud. The general effect of the act of the commissioners was to distribute the jurors to each of the townships throughout the county.

"In Moore v. Guano Co., 130 N. C. 229, Stanley, one of the commissioners, objected to a number of names in Shallotte Township, and those names were discarded and returned to box No. 1. Sheriff Walker also objected to several from Town Creek Township. When the name of Monroe Hickman was drawn, some one said, 'He is right there among the rest,' meaning that he was drawn from the same community, or neighborhood, as others whose names had been drawn. Commissioner Stanley, however, replied, 'I want him,' and his name was placed on the list. Stanley's own son was selected, he, the father, having stated that his son was so anxious to come to Southport that he had better be taken. The challenge to the array was allowed in that case.

"In Boyer v. Teague, 106 N. C. 576, the defendant Teague was sheriff of the county and a party to the particular action. There was no actual or intentional fraud, but the challenge to the array was allowed because the commissioners permitted Teague to participate in the drawing. In each of these cases, though, there was no actual fraud established by proof, yet the action of the commissioners was such as to open the door to fraud, and for that reason the challenge to the array was allowed, and properly so, as the personnel of the jury was made to depend, to some extent, at least, upon the will or conduct of an interested party.

"S. v. Perry (Hatton), 122 N. C. 1018, was to this effect: 'It has always been held that the regulations [fol. 246] in The Code, Secs. 1722 and 1728 (now C. S. 2312 to 2319 inclusive) are directory only to the board of county commissioners, and while they should be observed, the failure to do so did not vitiate the venire in the absence of bad faith or corruption on the part of the county commissioners.' All of the previous cases seem to have been cited in that case.

"In S. v. Dixon, 131 N. C. 808, it appears that, at the time of the revision of the tax list in June 1901, the commissioners added no new names to the jury list, but had purged the box by taking out the names of those who had not paid their taxes. This, though an irregularity, was held by the court not to be sufficient ground for challenge to the array, citing S. v. Perry, supra, and other decisions, and then proceeded: 'These cases are not overruled in Moore v. Guano Co., 130 N. C. 229, which merely holds that the conduct of the county commissioners in that case went beyond mere irregularity, and involved a matter so serious in its nature as to invalidate the panel drawn in such a manner.'

"In S. v. Daniels, 134 N. C. 641, the court again reaffirms the principles set forth in the older cases. There the county commissioners failed to make the prepayment of taxes a qualification for persons on the jury list. Again the court in that case distinguishes Moore v. Guano Co., supra.

"In S. v. Teachey, 138 N. C. 587, the board of commissioners revised the jury list at a time not fixed by the statute, and included in it names of persons otherwise qualified, but which did not appear upon the tax list. It was held that this was a sound objection to the panel.

"In S. v. Banner, 149 N. C. at page 521, the objection was that three years had elapsed without a revision of the jury list by the board of commissioners. It was held [Vol. 247] that this did not avoid the panel. There was a challenge to the array in Lanier v. Greenville, 174 N. C. 311, and the challenge was overruled, though the irregularities in that case were apparently much greater than they are in this. The subject is referred to again in S. v. Wood, 175 N. C. 819.

"It is admitted by the State in this case that the defendant is entitled to have the bill of indictment found by a grand jury, the individual members of which are legally qualified to act as grand jurors. S. v. Baldwin, 80 N. C. 390; S. v. Smith, ibid. 410; S. v. Watson, 86 N. C. 624; S. v. Sharp, 110 N. C. 604; S. v. Paramore, 146 N. C. 604. In this instance, however, there is not the slightest attack upon the competency of any indi-

vidual upon the grand jury to serve as a grand juror. It is admitted, and so found by the court, that there was no fraud or collusion in the selection of this particular grand jury. There was a mere irregularity, which in itself was intended to promote justice and to prevent fraud and collusion. In every case cited above, from S. v. Seaborn, 15 N. C. 305, to S. v. Perry, supra, such irregularities have been held not a ground of challenge to the array, the statute being directory in those matters not concerning the essence of the jury's constitution."

The authorities as decided by the appellate courts of other jurisdictions are to the same effect.

Welch v. State, 183 So. 879 (Ala.);
People v. Tennant, 83 P. (2d) 937, 940 (Cal.);
State v. Simmons, 198 A. 294 (N. J.);
Crickmore v. State, 12 N. C. (2d) 206, 213 (Ind.);
People v. King, 85 P. (2d) 928 (Cal.);
Davis v. State, 187 So. 783 (Fla.);
People v. McDrea, 6 N. W. (2d) 489 (Mich.);
W. E. Roche Fruit Co. v. Northern Pacific Ry. Co., 139 P. (2d) 714, 716 (Wash.);
Midkiff v. State, 243 P. 601 (Ariz).

[Vol. 248] In Midkiff v. State, supra, the Court said:

"The defendant on this question seems to be imbued with the idea that a literal compliance with paragraph 3522, supra, is essential, or else his constitutional and statutory rights have been denied him. A moment's reflection is enough to show how absurd such a contention is. Paragraphs 3515 and 3516, Civil Code, make all male citizens of the United States, free from certain disabilities therein enumerated, who have resided in the county at least 6 months, eligible to jury duty. It is an absolute impossibility to include in the list of jurors for any given year the names of all persons within the county qualified and liable to serve as such under the present law. The legislature has not empowered the board of supervisors, or anyone else, to take a census of such persons at the beginning of the year or at any

subsequent time during the year, and if, as defendant contends, all persons qualified and liable to serve as jurors must be listed as such, and the jury trying him taken therefrom, and that he cannot lawfully be tried by a jury otherwise constituted, then we have a situation created by the Legislature in which it is impossible to lawfully try a person charged with crime.

"We take it that the provisions of the statute empowering and directing the board of supervisors to make a jury list and to place thereon all persons qualified and liable to jury service in the county is directory and not mandatory. 35 C. J. 268, Section 225. Such, in effect, was the holding of this court in Lawrence v. State, 240 P. 863, for therein we held 'that a literal fulfillment of the statute is (not) required.' The list is required to contain such a large number of persons, not for the benefit of the accused so much as to distribute the burdens of jury duty over the whole citizenship. As was said by the Iowa court, passing upon a somewhat [Fol. 249] similar questio. in State v. Wilson, 144 N. W. 47, 50, 166 Iowa 309, 316:

"'It is very plain that, in exacting the large lists from which to draw grand and petit jurors, the purpose was not to protect any right of defendant or other litigants. Qualified jurors might readily have been drawn from a fraction of the number listed. The primary object is to distribute the burden of serving on the jury equitably among the inhabitants of the county. State v. Massey, 2 Hill (S. C.) 379; Sumrall v. State, 29 Miss. 202. In the last case, after stating the facts, the court said: "If, therefore, the name of any person already returned be omitted in the annual list, . . . or if the assessor should wholly fail to return an annual list as required by law, it will not vitiate the list of jurors, provided they are regularly drawn from the box No. 1; because the persons so drawn have been legally returned and enrolled as competent jurors, and it is no objection to their competency that other persons who should have been added to the list, in order that they might bear their part of the burden of such service, have not been regularly returned. The question is:

Have those persons who have been duly drawn from the box as jurors been duly returned and entered as persons liable to such duty? And, if this be answered in the affirmative, it would be absurd to say that they were illegal jurors, except so far as the individuals should be found deficient in the legal qualifications, to be tried by the court when they should be impaneled as a jury. If this view were not correct, the greatest inconvenience and confusion might frequently occur by the errors or delinquency of the returning officers, and the administration of justice be delayed or defeated by a narrow and literal interpretation of the statute in violation of its true spirit and intent. It would be to apply a regulation which was merely intended to subject all persons in the county liable as jurors to the performance [fol. 250] of that duty, and thus equalize the burden among the people, in such a manner as to render illegal persons duly returned, drawn, and impaneled, and thereby to embarrass and defeat the very system intended to be established. The defendant has not the right to be tried before any particular jury. All that he can demand is that his triers be legally qualified and be chosen from those designated in the manner prescribed by law to perform that service." ' "

In W. E. Roche Fruit Company v. Northern Pacific Ry. Co., 139 P. (2d) 714, 716, the Court said:

"Rem. Rev. Stat. Sec. 96, governs the matter under discussion. We quote the pertinent parts thereof: '. . . The county assessor in each county shall prepare annually a list of all persons qualified and subject to serve as jurors, giving the name, age, sex, whether naturalized or native-born citizen, occupation, jury district and postoffice address of such persons, and shall certify and file a copy thereof with the county clerk on or before the first day of June of each year. During the month of July of each year the judge or judges of the superior court for each county shall select from said list and other sources and enter in a book kept for that purpose and shall certify and file with the county clerk a jury list containing the names of a sufficient number

of qualified persons of fit character and intelligence to serve as jurors until the first day of August of the next calendar year. . . . *In making the selection the judge or judges shall not be bound by the list of names filed with the county clerk by the assessor, but may select qualified persons not included in the list. At any time and from time to time the judges may revise the jury list by striking therefrom or adding thereto, and* [fol. 251] *when this is done a certified list of names stricken or added shall be filed with the clerk.* . . . Any woman who upon being listed by the county assessor shall claim her exemption to serve as a juror, shall not be listed in the preparation of the list of jurors. . . .' (Italics ours.)

"Counsel insist, and rightly, that a litigant is entitled to have his case submitted to a jury selected in the manner required by law; and further that, if the selection is not made substantially in the manner required by law, an error may be claimed without showing prejudice, which will be presumed. 'But it will only be presumed when there has been a *material* departure from the statute.

"We have examined some sixteen or seventeen decisions cited by appellant from other jurisdiction, and, in considering the differences in the statutes and circumstances involved, we do not find the principles therein announced so varianced from our own that we feel inclined to recede from the position taken in State v. Rholeder, 82 Wash. 618, 620, 144 P. 914, 915, from which we quote as follows: 'The manner of making up the jury lists indicated by the statute is merely directory, and need be only substantially complied with to the end that a fair and impartial trial may be had. There are decisions to the effect that statutes describing the powers and duties of the jury commissioners and corresponding officers, to whom is intrusted the duty of making up the jury lists and prescribing the time and manner of exercising such duties, are mandatory. But in this state we have followed the great weight of authority, to the effect that such statutes are directory, and that the very fact that the officer in the

performance of his duty failed to conform precisely to the statutory requirements did not invalidate his act, unless it appears that there is reasonable apprehension that the complaining party has been prejudiced. The [fol. 252] purpose of all these statutes is to provide a fair and impartial jury, and if that end has been attained and the litigant has had the benefit of such a jury, it ought not to be held that the whole proceeding must be annulled because of some slight irregularity that has had no effect upon the purpose to be effected. There is no attempt to show any prejudice here, but the whole attack is based upon the act of the clerk in making use of the information obtained from sources other than the tax scrolls and pollbooks, it being said that such information is not from "official sources" as demanded by the statute. All we care to say, and all that need be said, is that the clerk has substantially complied with the duty imposed upon him by the statute, and such compliance is sufficient, in the absence of any showing of consequent injury. State v. Krug, 12 Wash. 288, 41 P. 126; State v. Bokien, 14 Wash. 403, 44 P. 889; State v. Straub, 16 Wash. 111, 47 P. 227; State v. Barnes, 54 Wash. 493, 103 P. 792, 23 L. R. A. (N. S.) 932; State v. LeRoy, 61 Wash. 405, 112 P. 635.'"

The True Intention or Reason for the Amendment of 1947 Expanding the Sources of Information in the Jury Statute Was for the Purpose of Placing Women on the Jury

It is contended by us that after the case of State v. Emery, 224 N. C. 581, wherein it was decided that women were not eligible to serve on the juries, the Constitution of the State was amended so as to allow women to serve on juries. Inasmuch as the names of women eligible for jury duty did not appear in any great numbers on the tax list, it was necessary to allow the county commissioners other sources of information to obtain the names of women to serve on juries. Apparently this Court agrees with this contention because [fol. 253] in the case of State v. Litteral, 227 N. C. 527, 531, the defendant raised the point that no women served on the

jury by which he was convicted. In disposing of this contention, this Court said:

> "Likewise the contention that the absence of women on the jury panel constitutes a fatal defect in the proceeding is without merit. The constitutional amendment adopted in 1946 merely makes women eligible for jury service. Before it becomes of practical application its needs must be implemented by legislation prescribing qualifications and manner of selection of women for jury service. *See Chap. 1007, Session Laws, 1947.*" (Emphasis supplied.)

The Board of County Commissioners, in Their Administration of the Jury Selection Statutes, Have Not Violated Any of the Constitutional Rights of the Defendant

The defendant, in his last attack, contends that the jury selection authorities have administered the statute in an unconstitutional manner. He shows the total population of both white and colored by the Census of 1940 and 1950, and the poll tax listings for the year of 1950; but it will be noted that no figures are shown for the total tax listings, and the jury list was made up by the commissioners from the total tax listings. It will further be seen from the evidence of Howard W. Floyd, the Courtroom Clerk, that one Negro woman, Mrs. Mary Y. Matthews, served on the Grand Jury that found the bill against the defendant. (See R. pp. 38 and 39). This present Grand Jury was drawn at the meeting of June, 1950, when sixty names were drawn from which the Grand Jury was taken which found this bill. (R. p. 45). It will also be seen from the evidence of Nat S. Crews, the County Attorney, that he attended all of the meetings and [fol. 254] that there had been no discrimination between white and colored people in the selection of the jury. On Record p. 46 will be found the public-local act under which the jury is drawn in Forsyth County. It will be seen that the Grand Jury of Forsyth County is drawn on the 25th day of December and the 25th day of June of each year so that the Grand Jury serves for a term of six months. The Court will also see from the evidence of Howard W. Floyd, beginning on Record p. 38, that several members of the colored race were drawn on the jury, and on Record p. 42 he

testifies that he has yet to see a jury in the box in the court-room in Forsyth County when there was not at least one member of the Negro race on the jury. On Record p. 24 it is agreed in a stipulation between counsel that out of the thirty-seven regular jurors called, there were at least eight members of the Negro race and that out of the special veniremen called, at least three were members of the Negro race. When we bear in mind also that there was one Negro woman who served on the Grand Jury that found the bill of indictment against the defendant, it is hard to see that there has been any jury discrimination against the eligible colored jurors.

It further appears from the evidence of John Click, who is the I. B. M. Supervisor in the office of the Tax Supervisor of Forsyth County, that he furnished the Register of Deeds office a list of all people eligible for jury duty according to the tax records. This list is compiled by the I. B. M. machine by running the cards through the machine, and a list is thus tabulated with all of the names and addresses. Juveniles are excluded and non-residents, as well as deceased persons. This list is tabulated every two years. These cards are not separated as to white taxpayers and colored taxpayers, but there is a code number on the card which allows colored taxpayers to be separated from white taxpayers if desired. The county commissioners, however, do not follow the code, and only people who are familiar [fol. 255] with the I. B. M. procedure would know what the code number indicated. There is no evidence whatsoever that any distinction was made in the drawing of the jury, and this is shown not only by the defendant's own witnesses but also by the State's evidence which begins on Record page 40. All of the witnesses who had anything to do with the jury list testified that there had been no exclusion of anyone because of race, and the defendant did not place upon the witness stand a single person of the colored race who was eligible to serve on the jury but who had never been called for jury duty.

The fact that in this case there was a code designation on the I. B. M. cards and on the list which separated the colored and white persons does not show discrimination.

State v. Walls, 211 N. C. 487 (Certiorari denied in 302 U. S. 635, 82 L. Ed. 494);

State v. Middleton, 36 S. E. (2d) 472 (S. C.);
U. S. v. Dennis, 183 Fed. (2d) 201 (Ad. Op. No. 3).

In the case of U. S. v. Dennis, supra, which is the famous trial of the Communists in New York, Mr. L. Hand, Circuit Judge, writing the opinion of the Court for the Second Circuit, on this point, said:

> "Nothing need be added, regarding the asserted discrimination against Negroes. So far as they were not represented on the list in proportion to their numbers, there is no evidence that it was on account of their race; and the disproportion is adequately explained by the fact that they are among the poorer groups. The argument drawn from the presence of the letter 'C' on their cards is without basis; it is understandable why the clerks should wish to know how many Negroes were on the list. The very fact that the Supreme Court had several times decided that they must be represented was occasion enough; any clerk would wish to avoid any color of a charge that he had discriminated against [fol. 256] them. Had the list been drawn up for this particular prosecution, there might be some plausibility in finding a motive for keeping down the possibilities of Negroes on the jury, so great have been the wrongs done that race; but only a jaundiced mind can suppose that a public official in New York, having no personal stake in the event, would hazard the risk of detection for the sake of venting his bias against the race generally."

We must call attention again to the fact that the defendant has not shown that any colored persons were available for jury duty that had not served or that had been excluded. As we will show later on, the burden was on the defendant to make this showing, and the defendant has not shown the long-continued exclusion, the purposeful, intentional, arbitrary exclusion of eligible representatives of the Negro race which warrants the inference or prima facie case requiring proof and rebuttal on the part of the State. For example, in the case of Norris v. Alabama, 294 U. S. 597, 79 L. Ed. 1074, the defendant placed upon the witness stand many

members of the Negro race who were eligible for jury service but who had never served on the jury during their lifetime.

It is not denied that under the Fourteenth Amendment, the eligible citizens of defendant's race are entitled to their chance to serve on the various juries and cannot be deprived of this chance by design. But fairness in selection does not require a guaranteed, proportional representation of the defendant's race on every jury selected and constituted.

Cassell v. Texas, — U. S. —, 94 L. Ed. 563 (Ad. Op. No. 13);
Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692;
Thomas v. Texas, 212 U. S. 278, 53 L. Ed. 512;
Virginia v. Rives, 100 U. S. 313, 25 L. Ed. 667;
Swain v. State, 215 Ind. 259, 18 N. E. 2d 921, 926;
Zimmerman v. State, — Md. —, 59 A. (2d) 675 (Cer-
[fol. 257] torari denied, 93 L. Ed. (Ad. Op. No. 7) 425);

16 C. J. S. (Constitutional Law), Sec. 540.

The type of discrimination condemned is said to be "purposeful discrimination" (Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692), or a "long-continued, unvarying, and wholesale exclusion of Negroes from jury service" (Norris v. Alabama, 294 U. S. 587, 79 L. Ed. 1074). There is a presumption that officers in charge of jury selection have performed their duty fairly and justly (Tarrace v. Florida, 188 U. S. 519, 47 L. Ed. 572, 116 So. 470 (Fla.), Certiorari denied in 278 U. S. 599, 73 L. Ed. 525) and without discrimination against race or class. The burden of proof is upon defendant to show an alleged discrimination in the selection of a grand or petit jury (Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692; Murray v. Louisiana, 163 U. S. 101, 41 L. Ed. 87).

In Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692, the Court uses the words "purposeful discrimination." In Norris v. Alabama, 294 U. S. 587, 79 L. Ed. 1074, the Court uses the words "long-continued, unvarying, and wholesale exclusion of Negroes from jury service."

It is very generally held that the burden of proof is on the

defendant or defendants to show an alleged discrimination in the selection of a grand or petit jury.

Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692;
Murray v. Louisiana, 163 U. S. 101, 41 L. Ed. 87.

There is a presumption that officers in charge of the selection and summoning of a jury or jury panel will be presumed to have performed their duty fairly and justly without discrimination against any race or class. In other words, discrimination in the selection of a jury will not be presumed.

Tarrance v. Florida, 188 U. S. 519, 47 L. Ed. 572, 116 So. 470 (Fla.). (Certiorari denied in 278 U. S. 599, 73 L. Ed. 525).

[fol. 258] Fairness in selection has never been held to require proportional representation of races upon a jury.

Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692;
Virginia v. Rives, 100 U. S. 313, 25 L. Ed. 667;
Thomas v. Texas, 212 U. S. 278, 53 L. Ed. 512.

A defendant has no constitutional right to be indicted or tried by any particular jury or by a jury composed in part of members of his race or class.

State v. Peoples, 131 N. C. 784, 42 S. E. 814;
State v. Sloan, 97 N. C. 499;
State v. Logan, 341 Mo. 1164, 111 S. W. (2d) 110 (1937);
Martin v. Texas, 200 U. S. 316, 50 L. Ed. 494.

"It is unsafe, we think, to attach too much significance to abstract, mathematical ratios or to the so-called law of recurrences in determining whether there has been arbitrary discrimination in the selection of the juries."

Swain v. State, 215 Ind. 259, 18 N. E. (2d) 921, 926.

The State contends, therefore, that the defendant has not met the burden imposed upon them and as required by

the principles stated in the case of Faye v. New York, 322 U. S. 261, 91 L. Ed. 2043, where this Court said:

> "It is fundamental in questioning the composition of a jury that a mere showing that a class was not represented in a particular jury is not enough; there must be a clear showing that its absence was caused by discrimination, and in nearly all cases it has been shown to have persisted over many years. Virginia v. Rives, 100 U. S. 313, 322, 323, 25 L. Ed. 667, 670, 671; Martin v. Texas, 200 U. S. 316, 320, 321, 50 L. Ed. 497, 498, 499, 26 S. Ct. 338; Thomas v. Texas, 212 U. S. 278, 282, 53 L. Ed. 512, 513, 29 S. Ct. 393; Smith v. Texas, 311 U. S. 128, 85 L. Ed. 84, 61 S. Ct. 164; Hill v. Texas, 316 U. S. 400, 86 L. Ed. 1559, 62 S. Ct. 1159; Akins v. Texas, [fol. 259] 325 U. S. 398, 89 L. Ed. 1692, 65 S. Ct. 1276, supra. Also, when discrimination of an unconstitutional kind is alleged, the burden of proving it purposeful and intentional is on the defendant, Tarrance v. Florida, 188 U. S. 519, 47 L. Ed. 572, 23 S. Ct. 402; Martin v. Texas, 200 U. S. 316, 50 L. Ed. 497, 26 S. Ct. 338; Norris v. Alabama, 294 U. S. 587, 79 L. Ed. 1074, 55 S. Ct. 579; Snowden v. Hughes, 321 U. S. 1, 8, 9, 88 L. Ed. 497, 502, 503, 64 S. Ct. 397; Akins v. Texas, 325 U. S. 398, 400, 89 L. Ed. 1692, 1694, 65 S. Ct. 1276."

Under the North Carolina practice, the questions raised by the defendant's motion to quash are in the first instance heard and decided by the trial Court. The trial Court makes findings of fact; and in the absence of an abuse of discretion or in the absence of lack of evidence to support findings, such decision of the trial Court is ordinarily binding upon the Supreme Court. This practice is illustrated by the following cases:

State v. Speller, 229 N. C. 67, 47 S. E. 2d 537;
State v. Kirksey, 227 N. C. 445, 42 S. E. 2d 613;
State v. Lord, 225 N. C. 354, 34 S. E. 103;
State v. Henderson, 216 N. C. 99, 3 S. E. 2d 57;
State v. Bell, 212 N. C. 20, 192 S. E. 852;
State v. Walls, 211 N. C. 487 (Certiorari denied 302 U. S. 635, 58 S. Ct. 18, 82 L. Ed. 494) 191 S. E. 232;
State v. Cooper, 205 N. C. 657, 172 S. E. 199;

State v. Peoples, 131 N. C. 784, 42 S. E. 814;
State v. Daniels, 134 U. S. 641, 46 S. E. 743.

While it is recognized by the State that on a question of this kind, the findings of the trial Court are not final; nevertheless, great weight is to be accorded the trial Court's decision because such Court makes the initial investigation and has a greater opportunity to investigate the facts.

Thomas v. Texas, 22 U. S. 278, 53 L. Ed. 512;
Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692.

In Thomas v. Texas, supra, the Supreme Court of the United States said:

[fol. 260] "As before remarked, whether such discrimination was practiced in this case was a question of fact, and the determination of that question adversely to plaintiff in error by the trial court and by the court of criminal appeals was decisive, so far as this court is concerned, unless it could be held that these decisions constitute such abuse as amounted to an infraction of the Federal Constitution, which cannot be presumed, and which there is no reason to hold on the record before us. On the contrary, the careful opinion of the court of criminal appeals, setting forth the evidence, justifies the conclusion of that court that the Negro race was not intentionally or otherwise discriminated against in the selection of the grand and petit jurors. Indeed, there was a Negro juror on the grand jury which indicted plaintiff in error, and there were Negroes on the venire from which the jury which tried the case was drawn, although it happened that none of them were drawn out of the jury box."

In Akins v. Texas, supra, the Supreme Court of the United States said:

"As will presently appear, the transcript of the evidence presents certain inconsistencies and conflicts of testimony in regard to limiting the number of Negroes on the grand jury. Therefore, the trier of fact who heard the witness in full and observed their demeanor on the stand has a better opportunity than a reviewing

court to reach a correct conclusion as to the existence of that type of discrimination. While our duty, in reviewing a conviction upon a complaint that the procedure through which it was obtained violates due process and equal protection under the Fourteenth Amendment, calls for our examination of evidence to determine for ourselves whether a Federal constitutional right has been denied, expressly or in substance [fol. 261] and effect, Norris v. Alabama, 294 U. S. 587, 589, 590, 79 L. Ed. 1074, 1076, 1077, 55 S. Ct. 579; Smith v. Texas, 311 U. S. 123, 130, 85 L. Ed. 84, 86, 61 S. Ct. 164, we accord in that examination great respect to the conclusion of the state judiciary, Pierre v. Louisiana, 306 U. S. 354, 358, 83 L. Ed. 757, 760, 59 S. Ct. 536. That respect leads us to accept the conclusion of the trier on disputed issues 'unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process.' "

The State contends, therefore, that this jury list was carefully selected and made up at the proper time in June 1949, from a list of taxpayers, both poll taxpayers and ad valorem taxpayers and that it is clear, both from the defendant's witnesses on the motion to quash, as well as the State's witnesses, that no discrimination was practiced. It is clear that Negroes have been serving on the juries in Forsyth County, and in fact, the defendant has never asserted that there has been arbitrary, purposeful, systematic exclusion of Negroes. He merely says their number has been limited because they have been drawn from the list of eligible taxpayers. Prior to 1947, this was the only list that could be used, and yet there have been cases on jury discrimination in the Supreme Court of the United States from North Carolina, and, in fact, from Forsyth County, and no one has ever attacked the jury statutes of this State as being unconstitutional on their face even when the selection was limited to the tax list; and, as we have shown, the States can constitutionally set up eligibility conditions for jurors.

The Defendant Cannot Avail Himself of the Question of Jury Discrimination on a Motion in Arrest of Judgment

We have heretofore called the attention of the Court [fol. 262] to the fact that the defendant made a motion in arrest of judgment wherein he, for the first time (R. p. 205), let the Court know that he contended that the statute, G. S. 9-1, had not been complied with by the county commissioners. All of this, therefore, is a matter of jury discrimination and jury selection, and under the practice in this State cannot be attacked by a motion in arrest of judgment. If the defendant claims discrimination in jury selection or any defect in jury selection, such matters are outside of the record and must be shown by motion to quash. In such matters, therefore, the defendant must rely on his motion to quash, and this motion to quash does not even mention the statute. That the defendant cannot raise Grand Jury selection questions on a motion in arrest of judgment, see State v. Linney, 212 N. C. 739.

A motion in arrest of judgment, of course, is only available for defects which appear on the face of the record. The statute does not appear on the face of the record, and this motion is, therefore, unavailable to the defendant, and he must rely on his motion to quash.

State v. Brown, 218 N. C. 415;
State v. McCollum, 216 N. C. 737;
State v. Linney, 212 N. C. 739.

Exceptions Not Argued in Defendant's Brief.

The defendant in his statement of the questions involved refers to certain exceptions dealing with the evidence. These are stated in question form as Nos. 4 and 6 in his statement of questions set forth in his brief. We cannot find that the defendant has anywhere advanced any argument in his brief in support of these exceptions or that he has cited any authority in support of same, and, therefore, under the rulings of this Court, these exceptions are deemed to be abandoned.

[fol. 263] State v. Stallings, 230 N. C. 252;
State v. Reid, 230 N. C. 561;
State v. Frye, 229 N. C. 581.

The Defendant's Constitutional Rights Were Not Violated by the Admission of His Confession in Evidence

Exception No. 17 (R. p. 133):

The defendant was arrested and detained for several days before he was formally charged with this offense. He was questioned several times, and all of these occasions, with the length of time he was questioned, are set forth in the record. He was warned of his rights on each occasion and was advised that he could have counsel. There is not the slightest evidence of any brutality or that the defendant was ill-treated in any manner whatsoever. He was given cigarettes when he asked for them and was given all of his meals. On some occasions, his girl friend, Mattie Mitchell, was present, and at least on one or two occasions, his mother was present. He was never questioned inside the jail but was brought outside the jail, and upon his request, the conversation was stopped at any time. On each occasion, the officers talked with him in the offices of the Detective Division. These offices are on the second floor of the City Hall and are entirely open to the public. See evidence of W. F. Reid, police officer, on Record page 95. See also evidence of Captain W. R. Burke on Record page 127.

Evidence of Clyde Brown

The defendant, Clyde Brown, was a witness in his own behalf on the subject of the admissibility of his confession. [fol. 264] His evidence begins on Record page 107, and we wish to comment especially on his evidence.

On Record page 109, he specifically admits that the officers told him that he could have the benefit of counsel on two occasions. He tries to repudiate this later on in his testimony. (See R. p. 112). On Record page 114, he admits that his girl friend, Mattie Mitchell, told him that he had told an untruth about the way he was dressed and when he left her house, and he agreed in her presence that he had told an untruth. If the court will read his whole testimony as the same appears in the record, it will find that he himself admits that he did everything that the State asserted against him except the actual rape.

On Record page 116, he admits that he was fed his meals at the regular hours, and he admits that no one hit him or abused him in any way. On Record page 118, he admits that he was given cigarettes and that everything was done to make him comfortable. On Record page 119, he admits that he told the officers that he went in the radio shop to rob the girl and that he took her pocketbook, but that he did not rape her.

On Record page 120, he admits that he was not threatened or mistreated in any way and that he was warned of his rights. He also states that he was warned that anything he said would be used against him. On Record page 121, he admits that he called the Grossman's Record Shop from the City Market for the purpose of getting Betty Jane Clifton away from the radio shop and that in the telephone conversation, he pretended to be a woman, inquiring about a radio; and on Record page 122, he admits that he went into the radio shop after that conversation. Beginning at the bottom of page 122 of the Record and continuing over on page 123, the Court examined the defendant, and he told the Court that he was never mistreated by the officers in any manner; that no violence was used or threat-
[fol. 265] ened to be used against him; that nobody hit him or threatened to hit him; that nobody offered him any reward and that nobody told him that he would get out lighter if he made a statement. He admits that he was told that he did not have to make a statement and that he was warned at least once before he made his final statement and that at that time he was told that any statement which he might make would be used against him.

As a matter of fact, when he made his last statement, when he admitted the rape of the prosecuting witness, he sent for the officers himself. He partially admits all of this on Record page 124. On Record page 125, he admits that he told the officers where the pocketbook or billfold of Betty Jane Clifton was concealed, and on Record page 126, he admits that he never at any time asked for an attorney.

The Court went fully into all of these matters, and on Record page 133, the Court found as a fact that the confession was given freely and voluntarily and was, therefore,

competent. On Record page 134, the trial continues in the presence of the jury.

The ruling of the Court was amply supported by the evidence, and under the decisions of this State, this ruling cannot be disturbed upon appeal.

State v. Brown, 231 N. C. 152, 56 S. E. 2d 441;
State v. Little, 227 N. C. 527, 43 S. E. 2d 84;
State v. Hammond, 229 N. C. 108, 47 S. E. 2d 704;
State v. Thompson, 227 N. C. 19, 40 S. E. 2d 620;
State v. Wagstaff, 219 N. C. 15, 12 S. E. 2d 657;
State v. Fain, 216 N. C. 157, 4 S. E. 2d 319;
State v. Godwin, 216 N. C. 49, 3 S. E. 2d 347;
State v. Grass, 223 N. C. 31, 25 S. E. 2d 193.

[fol. 266] The Admission of Defendant's Confession is Not in Violation of the Fourteenth Amendment of the Constitution of the United States.

In his brief, the defendant admits that he does not charge the Police Department of the City of Winston-Salem with any shocking examples of police abuse as contained and set forth in certain cases decided by the Supreme Court of the United States, but he contends that the conduct of the Police Department was of such a nature that the defendant was coerced, and the confession was involuntary. He then tries to bring this case within the purview of the ruling in Turner v. Pennsylvania, 338 U. S. 62, 67, 93 L. Ed. 1810.

Our Statute, G. S. 15-41, provides when a defendant can be arrested without a warrant. It is also provided by G. S. 15-46 the procedure to be followed when an arrest is made without a warrant. It is provided by G. S. 15-47 that the arrested person is to be informed of the charge against him, bail is to be allowed except in capital cases, and the defendant is to be allowed to communicate with counsel or friends.

In this case, the defendant was repeatedly told that he could have counsel; he was told that the charge against him was the assault and rape of Betty Jane Clifton; he was allowed to see his friends, and there is nothing in this record that brings this case within the purview and scope of any of the cases decided by the Supreme Court of the

United States, and this we will demonstrate later on in this brief.

As to the defendant's detention, he was being held for a capital offense, and in this connection, the case of State v. Exum, 213 N. C. 16, is in point. In this case, the facts disclosed that the defendant was imprisoned in jail in another county. The defendant was asked to make a confession and did so upon the condition that he be taken [fol. 267] to his home to confer with relatives. While on the trip in the car with the officers, the defendant confessed the crime. The defendant at the trial contended that G. S. 15-47 had been violated and that he had been illegally detained. In disposing of this contention, the Court said:

> "The evidence at the trial shows that immediately after his arrest, the defendant was informed by the sheriff that he was charged with the murder of James Williams. This is a capital case. For this reason the provisions of the statute with respect to bail are not applicable to this case.
>
> "There is no evidence in the record tending to show that after his arrest and while he was in the custody of the sheriff the defendant demanded of the sheriff that he be permitted to communicate with friends or with counsel. For this reason the provisions of the statute with respect to the right of a defendant in the custody of an officer and charged with the commission of a crime, to communicate with friends and counsel are not applicable to this case.
>
> "Conceding, however, that the sheriff had violated the provisions of the statute, in *in* the instant case, it would not follow that a voluntary confession made by the defendant to the sheriff would be inadmissible as evidence because of such violation. It is not so provided in the statute."

The mere detention and questioning of a suspect is not prohibited either at common law or under the due process clause.

Lyons v. Oklahoma, 322 U. S. 596, 88 L. Ed. 1481;
Lisenba v. California, 314 U. S. 219, 239-241, 86 L. Ed. 166, 181, 182.

Even if it should be considered that the detention of the defendant was illegal, this does not necessarily become decisive on the question of the voluntariness of defendant's [fol. 268] confessions; and if it should be decided that defendant's detention was contrary to law, this does not, of itself, decide the issue in defendant's favor.

Lisenba v. California, 314 U. S. 219, 86 L. Ed. 166, 179.

All of the cases cited and relied upon by defendant either show long continued questioning in relays by officers, brutal treatment, threats or combinations of these factors, plus illegal detention. We wish to briefly comment on the important cases dealing with confessions:

Hailey v. Ohio, 332 U. S. 596, 92 L. Ed. 224: The petitioner, a boy 15 years old, was questioned for five hours by police in relays by one or two each. He was shown an alleged confession of his co-defendants. A lawyer tried to see him twice but was refused admission by police. His mother testified that his clothes were torn and bloodstained.

Malinski v. New York, 324 U. S. 401, 89 L. Ed. 1029: Malinski was not allowed to see his attorney although he asked for him. Malinski was held in a hotel from 8 o'clock A.M. to 6 o'clock P. M. then held in a hotel for that night and for the next three days. He was questioned at various times and made various confessions. There is no comparison in the facts in the Malinski case and in the present case.

Ashcraft v. Tennessee, 322 U. S. 143, 88 L. Ed. 1192: The petitioner was subjected to a 36 hour period of practically continuous questioning, seated under powerful electric lights. This questioning was done by relays of officers and experienced investigators. There is no comparison in this case to the facts now before the Court.

Lyons v. Oklahoma, 322 U. S. 596, 88 L. Ed. 1481: Here the petitioner had made a confession which was admittedly [fol. 269] involuntary and illegal. He afterwards made another confession, which it was contended was voluntary. The primary question considered in the opinion was the effect of the first confession on the second confession.

McNabb v. U. S., 318 U. S. 332, 87 L. Ed. 819: The petitioner in this case was questioned by numerous officers over a period of two days. This case came from a lower Federal Court, and no constitutional issue was decided. The case is not an authority in evaluating the constitutionality of confessions used in State courts.

Ward v. Texas, 316 U. S. 547, 86 L. Ed. 1663: Here the petitioner was arrested without a warrant by a sheriff from another county; he was removed to a county more than one hundred miles away and for three days was driven about from county to county and questioned continuously by various officers who told him of threats of mob violence, and there was little probability of such event. The sheriff testified that he saw evidence of cigarette burns on the petitioner's body.

Lisenba v. California, 314 U. S. 219, 86 L. Ed. 166: The petitioner in this case was held incommunicado for a long period of time, was refused counsel and questioned from Sunday night until Tuesday morning. The petitioner made two confessions, one of which was not admitted, but the second one was ruled to be valid.

White v. Texas, 310 U. S. 530, 84 L. Ed. 1342: Here the petitioner, an illiterate farm hand, was held in jail for several days without counsel and out of touch with friends. For several nights, he was taken, handcuffed, by armed officers into the woods for interrogation. In jail, the petitioner was placed by himself, where the sheriff kept watching the petitioner and talking to him. A confession was [fol. 270] obtained after questioning by the county attorney from 11 P.M. to 3:30 A.M. the next morning. During this period, the officers who had taken him to the woods were in and out of the room.

Chambers v. Florida, 309 U. S. 227, 84 L. Ed. 716: Here a group of young Negroes were arrested and held in jail without formal charges. They were not permitted to see counsel or friends, and believing that they were in danger of mob violence, made confessions at the end of an all-night session, following five days of questioning, each by himself, by State officers and other white citizens and in the presence of from four to ten white men, and after a previous confession had been pronounced "unfit" by the prosecuting attorney.

Brown v. Mississippi, 297 U. S. 278, 80 L. Ed. 682: In this

case, there was undenied brutality, such as whipping the petitioner, hanging and then taking him down, and his body showed marks of other brutal treatment.

Wan v. U. S., 266 U. S. 1, 69 L. Ed. 131: In this case, the petitioner was subjected to continuous examination for seven days by police officers, and which examination on one occasion continued throughout the night. The petitioner was sick and in pain, and the medical examiner testified that the petitioner would have confessed in order to secure relief. This was a Federal case.

Watts v. Indiana, 338 U. S. 49, 69 S. Ct. 1347: The petitioner, Watts, had been held for six days, during which time, except for Sunday, he was questioned by relays of officers from 5:30 or 6 P. M. until 2 or 3 A. M. He was not taken before a magistrate as required by Indiana law, and was not advised of his constitutional rights.

Turner v. Penna., 338 U. S. 62, 69 S. Ct. 1352: Turner was questioned by relays of officers *from 4 to 6 hours a day* [fol. 271] *for 5 days*. He was not permitted to see friends or relatives and was not informed of his right to remain silent.

Harris v. South Carolina, 338 U. S. 68, 69 S. Ct. 1354: Harris was held in jail for several days, during which time he was questioned, and on one night, five officers worked in relays. On the next night, the questioning continued under the same conditions from 1:30 in the afternoon until past one the following morning; and on Wednesday afternoon, the Chief of the State Constabulary, with a half-dozen of his men, questioned Harris for an hour, and the local officers then questioned Harris for three and one-half hours longer. The sheriff then threatened to arrest petitioner's mother for having stolen property, and petitioner confessed.

In the next to the last paragraph in the opinion in Ward v. Texas, 316 U. S. 547, 86 L. Ed. 1663, the court lays down a series of factors or tests and states that any one of the grounds would be sufficient cause for reversal. The court will see from an examination of the cases cited in the note to support this proposition that there were always combinations of brutality or persistent questioning plus, in some cases, illegal detention or threats of mob violence. The point is that in each of the cases cited to uphold the para-

graph, the facts reveal combinations of these situations, and the cases are not decided on any one single point. The cases of Canty v. Alabama, 309 U. S. 629, 84 L. Ed. 988; Lomax v. Texas, 313 U. S. 544, 85 L. Ed. 1511; and Vernon v. Alabama, 313 U. S. 547, 85 L. Ed. 513, were disposed of by *per curiam* opinions, and no recitals of the facts are given.

We say, therefore, that where the findings of the State Court are supported by substantial evidence, the same should be upheld, and, in fact, as determined by the cases of Lisenba v. California, supra, and Lyons v. Oklahoma, supra, the same are final unless unconstitutionality is [fol. 272] shown by admitted facts.

Conclusion

We shall not attempt to answer the arguments of the defendant based on the Ten Commandments, Victor Hugo's *Les Miserables* nor the editorial of the Durham Morning Herald.

All we contend is that the defendant is subject to the same laws and the same rules that all other citizens of the State are subject to and that he does not have any special privileges or exemptions. The Fourteenth Amendment was designed to afford equality in treatment. It was not designed to grant special licenses and special privileges to any group of people because of their race. This record shows a cruel and horrible offense committed on a defenseless girl and one which the defendant himself admits all acts except the actual rape. The medical evidence establishes beyond all peradventure that the victim in this case was raped. We think that the evidence in the record amply supports the verdict and the judgment of the Court, and we sincerely contend that the same should be confirmed.

Respectfully submitted, Harry McMullan, Attorney General; Ralph Moody, Assistant Attorney General.

[fols. 273-274] EXHIBIT 8 TO ANSWER—Filed July 5, 1951

IN SUPREME COURT OF NORTH CAROLINA

STATE v. CLYDE BROWN

OPINION—Filed 2 February, 1951

[fol. 275] Appeal by defendant from Moore, J., September Term, 1950, of Forsyth.

Criminal prosecution on indictment charging the defendant with rape upon one Betty Jane Clifton, a female.

On the morning of 16 June, 1950, between 8:00 a.m. and noon, some man entered the radio shop of Thomas E. Clifton on West Seventh Street, Winston-Salem, N. C., found Betty Jane Clifton, 16 or 17-year-old daughter of the proprietor alone in charge, assaulted her in a cruel and fiendish manner, raped her, and left her in a helpless condition. She was found unconscious by her father when he came into the shop around 12 o'clock.

The defendant was arrested on suspicion and held for investigation. He told various stories of his whereabouts on the morning in question. These were checked by the officers and found to be false. Finally the defendant sent for the officers of his own accord and confessed to them that he went into the radio shop, assaulted, beat and raped Betty Jane Clifton.

The defendant was indicted, tried, convicted and sentenced as the law commands in such case. The details of the crime are omitted as they are not material on the questions raised by the appeal.

Before pleading to the bill of indictment the defendant moved to quash the indictment on the ground of jury defect in the grand jury which returned a true bill in the case. The alleged defects were that the grand jury was "unlawfully constituted" in violation of defendant's constitutional rights; and further that it was drawn with a view of "limiting representation thereon of Negroes or persons of African descent."

On the hearing of the motion to quash, nothing was said about the failure of the Commissioners to comply with what is now called the "mandatory provisions" of G.S. 9-1 in

selecting the jury list from which the grand jury was drawn, and not until the case was tried and the defendant found guilty did counsel advance this contention of jury defect. Thus he now seeks to bring this forward on what he says is a motion in arrest of judgment. Both motions—the one to quash and the other in arrest of judgment—were overruled. Exceptions.

The defendant also contended on the trial that his confession was involuntary, and should have been excluded. Exception.

Verdict: Guilty as charged in the bill of indictment.

Judgment: Death by asphyxiation.

The defendant appeals, assigning errors.

Attorney-General McMullan and Assistant Attorney-General Moody for the State.

Hosea V. Price and Harold T. Epps for defendant.

[fol. 276] STACY, C. J. Putting aside any consideration of formal matters, which are not without substance, however, the only real questions sought to be presented on the appeal are: first, whether the jury list was selected from the legally prescribed source; and, secondly, whether the defendant's confession was voluntary.

First. The Jury List. Prior to 1947, it was provided by G.S. 9-1 that the tax returns of the preceding year for the county should constitute the source from which the jury list should be drawn, and this was then the only prescribed source. To meet the constitutional change of the previous election making women eligible to serve on juries, the statute was amended in 1947 enlarging the source to include not only the tax returns of the preceding year but also "a list of names of persons who do not appear upon the tax lists, who are residents of the county and over twenty-one years of age," to be prepared in each county by the Clerk of the Board of Commissioners.

It was made to appear on the hearing that the Commissioners used only the tax returns of the county for the preceding year in selecting the jury list for the September Term, 1950, Forsyth Superior Court, from which the grand jury was drawn that performed the accusation against the defendant. This circumstance, the defendant contends, re-

sulted in discrimination against Negroes or jurors of African descent, the race to which he belongs. The conclusion, it seems to us, is far-fetched and clearly a *non sequitur*. It rests only in imagination or conjecture. The defendant must show prejudice, other than guess or surmise, before any relief could be granted on such gossamer or attenuate ground. There was no challenge to any member of the jury, grand or petit, and no suggestion that any was disqualified. Indeed, the trial court was at pains to see that every opportunity was afforded for the selection of a fair and impartial jury.

Negroes were neither excluded nor discriminated against in the selection of either the grand or petit jury which performed in this case. One Negro woman served on the grand jury and at least one prospective Negro juror was tendered to the defendant for the petit jury and was excused or rejected by his counsel. It has been the consistent holding in this jurisdiction, certainly since the case of *S. v. Peoples*, 131 N.C. 784, 42 S.E. 814, that the intentional, arbitrary and systematic exclusion of any portion of the population from jury service, grand or petit, on account of race, color, creed, or national origin, is at variance with the fundamental law and cannot stand. On the other hand, it has also been the holding with us, consistent with the national authorities, *Akins v. Texas*, 325 U. S. 398, 89 L. Ed. 1692, that it is not the right of any party to be tried by a jury of his own race, or to have a representative of any particular race on the jury. It is his right, however, to be tried by a competent jury [fol. 277] from which members of his race have not been unlawfully excluded. *S. v. Speller*, 231 N. C. 549, 57 S. E. 2d 759; *S. v. Koritz*, 227 N. C. 552, 43 S. E. 2d 77; *Ballard v. U. S.* 329 U. S. 187, 91 L. Ed. 181. No such exclusion appears here. "The law not only guarantees the right of trial by jury, but also the right of trial by a proper jury; that is to say, a jury possessing the qualifications contemplated by law," and in the selection of which there has been neither inclusion nor exclusion because of race. *Hinton v. Hinton*, 196 N. C. 341, 145 S. E. 615; *Cassell v. Texas*, 339 U. S. 282.

Whatever may be the holdings in other jurisdictions, it is thoroughly settled by our decisions that the provisions of the statute now in focus are directory, and not mandatory, in the absence of proof of bad faith or corruption on the

part of the officers charged with the duty of selecting the jury list. *S. v. Mallard*, 184 N. C. 667, 114 S. E. 17, and cases there cited. Not only has no bad faith or corruption been shown on the part of the officers here, but none has so much as been suggested. *S. v. Smarr*, 121 N. C. 669, 28 S. E. 549. Hence, the motions to quash and in arrest were properly overruled. It may be added, also, that the motion in arrest was inappropriate for defendant's present purpose, as the matters sought to be challenged are not apparent on the face of the record. *S. v. Sawyer, ante*, 76, 62 S. E. 2d 515; *S. v. McKnight*, 196 N. C. 259, 145 S. E. 281, and cases there cited.

Finally, and in conclusion of this phase of the case, it may be said the defendant has shown no error affecting any of his substantial rights. He has pointed out no racial discrimination in the selection of the jury list, the grand jury or the petit jury which considered the indictment against him. Nor does he specifically so contend. He only says or suggests that there might have been discrimination against his race. He concedes that neither equal nor proportional representation of race is a constitutional requisite in the selection of juries. *Akins v. Texas, supra.* Indeed, proportional racial limitation is actually forbidden. *Cassell v. Texas, supra.* The defendant's position is one of possible discrimination, not one of racial imbalance in jury composition. A person accused of crime is entitled to have the charges against him performed by a jury in the selection of which there has been neither inclusion nor exclusion because of race. *Cassell v. Texas, supra.* This, the defendant has had in respect of both the grand and petit juries which performed in the case, or, at least, the contrary in respect of neither has been made to appear on the record. Hence, his claim of jury defect or irregularity is unavailing.

Second. The Defendant's Confession. The only basis of challenge to the competency of defendant's confession is that he was under arrest, being held without warrant, and was in custody at the time it was given. These circumstances, taken singly or all together, unless they amounted to coer- [fol. 278] cion, were not sufficient in and of themselves to render a confession, otherwise voluntary, involuntary as a matter of law and incompetent as evidence: *S. v. Stefanoff*, 206 N. C. 443, 174 S. E. 411; *S. v. Gray*, 192 N. C. 594, 135 S. E. 535; *S. v. Thompson*, 224 N. C. 661, 32 S. E. 2d 24;

S. v. Litteral, 227 N. C. 527, 43 S. E. 2d 84; *S. v. Speller*, 230 N. C. 345, 53 S. E. 2d 294; *S. v. Brown*, 231 N. C. 152, 56 S. E. 2d 441.

After a preliminary investigation, pursuant to the procedure outlined in *S. v. Whitener*, 191 N. C. 659, 132 S. E. 603, the trial court ruled the confession to be voluntary, and permitted the solicitor to offer it in evidence against the prisoner. *S. v. Grass*, 223 N. C. 31, 25 S. E. 2d 193; *S. v. Hammond*, 229 N. C. 108, 47 S. E. 2d 704. The ruling is fully supported by the evidence, as witness especially the following questions propounded by the court and the answers of the defendant:

"Q. Clyde, let me ask you a question. From the time you were put in custody on the 19th of June, up until after Mr. Price was employed, came over there to the jail to see you, after you made all the statements you made in this case, were you ever mistreated in any manner by these officers, any of the officers? A. No.

"Q. Was any violence used or threatened to be used against you? A. No, sir.

"Q. Did anybody hit you or threaten to hit you? A. No, sir.

"Q. Did anybody threaten to do you any physical injury of any kind? A. No, sir.

"Q. Did anybody offer you any reward or hope of reward to make any statement? A. No sir.

"Q. Did anybody tell you that you'd get out lighter, they'd try to help you get out lighter if you'd make a statement? A. No.

"Q. And were you, at different times—at least on two occasions, I believe you said—warned that you did not have to make a statement? A. Yes sir.

"Q. You were warned at least once before you made this final statement? Is that correct? A. Yes sir.

"Q. At that time you were told that any statements which you might make would be used against you? A. Yes sir."

It is well understood that a free and voluntary confession is admissible in evidence against the one making it, because it is presumed to flow from a strong sense of guilt or from a love of the truth, both of which are, at times, compelling

motives and powerful aids in the investigation of crimes. Just the reverse is true, however, in the case of an involuntary confession, since a statement wrung from the mind by the flattery of hope or by the torture of fear, comes in such questionable manner as to afford no assurance of its verity, and merits no consideration. *S. v. Anderson*, 208 N. C. 771, 182 S. E. 643; *S. v. Patrick*, 48 N. C. 443. A con- [fols. 279-283] fession is voluntary in law when—and only when—it was in fact voluntarily made: *S. v. Jones*, 203 N. C. 374, 166 S. E. 163; *Ziang Sung Wan v. United States*, 266 U. S. 1, 69 L. Ed. 131.

The observations of *Henderson, J.*, in *S. v. Roberts*, 12 N. C. 259, are sound and presently pertinent: "Confessions are either voluntary or involuntary. They are called voluntary when made neither under the influence of hope or fear, but are attributable to that love of truth which predominates in the breast of every man, not operated upon by other motives more powerful with him, and which, it is said, in the perfectly good man cannot be countervailed. These confessions are the highest evidences of truth, even in cases affecting life. But it is said, and said with truth, that confessions induced by hope or extorted by fear are, of all kinds of evidence, the least to be relied on, and are therefore entirely to be rej ted."

The court's ruling on the voluntariness of the confession is supported by the defendant's own testimony given on the preliminary inquiry. The contentions of error in its admission are without force or substance.

The remaining exceptions, noted by the defendant on the trial, have been abandoned by him as they are not brought forward in his brief and no argument has been advanced, or authority cited, in support thereof. Hence, under the rule, they are deemed feckless or without merit and are treated as abandoned. Rule 28 of the Rules of Practice in the Supreme Court, 221 N. C. 562.

On the record as presented, the verdict and judgment will be upheld.

No error.

[fol. 284] [File endorsement omitted]

EXHIBIT 2 TO ANSWER—Filed July 5, 1951

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. —

CLYDE BROWN, Petitioner,

vs.

STATE OF NORTH CAROLINA; Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

To the Honorable, the Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

The petitioner herein prays that a writ of certiorari issue to review the judgment of the Supreme Court of North Carolina, affirming a judgment of conviction by the Superior Court of Forsyth County, North Carolina, of petitioner on the charge of rape and the sentence of execution imposed pursuant to said conviction.

Statement of the Matter Involved

Petitioner Clyde Brown, an illiterate Negro of about twenty years of age, was tried and convicted in the Superior Court of Forsyth County, North Carolina, of assaulting and raping a young white girl named Betty Jane Clifton. The crime was allegedly committed on the 16th day of June, 1950, and the defendant was brought before the court for trial at the September Term, 1950 of the Forsyth County Superior Court. At the time of his arraignment, and before pleading to the bill of indictment and before the selection of the jury, petitioner entered a special appearance and made a motion to quash the bill of indictment (Record, p. 22), upon the ground that the grand jury returning the [fol. 285] indictment against the the defendant was unlawfully constituted, in violation of the rights of the defendant

as guaranteed him under the Fifth and Fourteenth Amendments to the Constitution of the United States, in that the members of said grand jury were selected and drawn with a view and purpose of systematically limiting the representation thereon of persons of the Negro race, to which race petitioner belongs, with the result that petitioner and members of his race are unlawfully discriminated against. The issue raised by petitioner's said motion was tried upon evidence presented, and the trial judge thereafter entered an order denying said motion (Record, pp. 49-52). Thereafter, in amplification and extension of his motion to quash the bill of indictment, petitioner, at the termination of the trial (Record, pp. 205-208), made a motion in arrest of judgment in which he sought to re-assert and expand the basis of his previous motion. This last motion the trial court also denied (Record, p. 207).

During the course of petitioner's trial, over the timely objection of the defendant, the State was allowed to introduce into evidence statements of petitioner in the nature of confessions of commission of the alleged crime. (Record, pp. 94-133). Petitioner contends that the statements sought to be introduced as confessions were inadmissible for that they were unlawfully obtained, in violation of the guaranties of the Fourteenth Amendment to the Constitution of the United States. Upon the trial of issue thus raised, the trial Court likewise overruled the petitioner's objection. Thereafter, upon trial of petitioner before the jury, he was convicted of the capital crime of rape, without recommendation of mercy, and the sentence imposed upon him was that of death by asphyxiation. (Record, pp. 208-209). This latter conviction and sentence have been upheld by the Supreme Court of North Carolina, in an opinion filed on the 2nd day of February, 1951 (State vs. Brown, 233 N. C. 202, 63 S. E. 2d 99). Petitioner is presently incarcerated on death row in the State Prison of North Carolina. The date of execution of petitioner was fixed for February 23, 1951, but by order dated February 13, 1951, signed by Stacy, C. J., of the Supreme Court of North Carolina, the sentence of [fol. 286] death has been stayed pending the final determination of the instant petition by this Court.

Simultaneously with the filing of the instant petition and

brief, petitioner moves this Court by affidavit for leave to proceed *in forma pauperis*. Accordingly, the instant petition and brief are presented to this Court in typewritten form. The record in the instant petition is the record of the trial of this cause in the Superior Court of Forsyth County at the September, 1950 Term of said Court, as certified to the Supreme Court of North Carolina by the Clerk of the Superior Court of Forsyth County, which record, together with a certified copy of the opinion of the Supreme Court of North Carolina, filed on February 2, 1951, as aforesaid, affirming the judgment and sentence rendered against petitioner, a certified copy of petition to stay execution of judgment and sentence pending the determination of the issue raised by the instant petition, and a certified copy of the Order entered by Stacy, C. J., staying execution of judgment and sentence, has been forwarded by the Clerk of the Supreme Court of North Carolina to this Court upon the request of petitioner.

The evidence adduced by the state during petitioner's trial discloses that on Friday, June 16, 1950, at or around noon-time, one Betty Jane Clifton, a 17 year old high school student, was cruelly beaten and raped in the radio shop operated by her father, Thomas E. Clifton, on West 7th Street, in the City of Winston-Salem, North Carolina, which she was tending in the absence of her father. The evidence discloses that Betty Jane Clifton was beaten about the head with a rifle butt, or some other blunt instrument; she was found in the shop in an unconscious condition and removed to a local hospital where she hovered between life and death for many days. The defendant Clyde Brown was seen in the vicinity of the radio shop close to the time of the happening of the alleged crime, and was later arrested and held for some time for investigation in connection therewith. Various angles of his alleged connection with the crime were run down by local police officers, and after several days of detention without formal charge, the petitioner allegedly confessed the commission of the crime. Upon these representations of the State, petitioner was [fol. 287] determined by the jury's verdict to have been the perpetrator of the crime.

Jurisdiction

The jurisdiction of this Court is invoked under Section 1257(3) of title 28 of the United States Code, 1948 Revisal.

Constitutional Provisions Involved

1. United States Constitution, Amendment XIV, Section 1:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. United States Constitution, Amendment V:

> ". . . nor shall any person . . . be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; . . ."

Question Involved

1. Whether or not there has been unlawful discrimination against persons of the Negro race in the selection and constitution of grand juries in Forsyth County, including the grand jury which indicted petitioner, solely for reason of race or color, resulting in deprivation of the equal protection of the laws guaranteed petitioner by the Fourteenth Amendment to the United States Constitution.

2. Whether the alleged confessions admitted in evidence were obtained as a result of fear, duress, coercion, or other unlawful circumstances, whereby the conviction of and sentence imposed upon petitioner resulted in a deprivation of his life and liberty without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

[fol. 288] Reasons Relied on for Allowance of the Writ

1. For reasons set out at pages 8 to 12 of the brief in support of the petition herein, the denial of the motion by petitioner challenging the grand jury which indicted him, was in conflict with the applicable decisions of this court:

Virginia v. Rives, 100 U. S. 313, 322; *Strauder v. West Virginia*, 100 U. S. 303; *Ex Parte Virginia*, 100 U. S. 339; *Neal v. Delaware*, 103 U. S. 370; *Bush v. Kentucky*, 107 U. S. 110; *Gibson v. Mississippi*, 162 U. S. 565, 584, 591; *Carter v. Texas*, 177 U. S. 442; *Martin v. Texas*, 200 U. S. 316, 321; *Norris v. Alabama*, 294 U. S. 587; *Hale v. Kentucky*, 303 U. S. 613; *Pierre v. Louisiana*, 306 U. S. 354; *Smith v. Texas*, 311 U. S. 128; *Hill v. Texas*, 316 U. S. 400; *Patton v. Mississippi*, 332 U. S. 463; *Brunson v. North Carolina*, *King v. North Carolina*, *Jones v. North Carolina*, *James v. North Carolina*, *Watkins v. North Carolina*, 333 U. S. 851; *Cassell v. Texas*, 339 U. S. 282.

2. For the reason set forth at pages 12 to 15 of the brief in support of the petition herein, the admission into evidence of the alleged confessions of the petitioner, in view of the undisputed evidence in the case concerning the alleged confessions, is in conflict with the applicable decisions of this Court. *Brown v. Mississippi*, 297 U. S. 278; *Chambers v. Florida*, 309 U. S. 227; *Canty v. Alabama*, 309 U. S. 629; *White v. Texas*, 309 U. S. 631; *id.*, 310 U. S. 530; *Lomax v. Texas*, 313 U. S. 544; *Vernon v. Alabama*, 313 U. S. 547; *Ward v. Texas*, 316 U. S. 547; *Ashcraft v. Tennessee*, 332 U. S. 143; *id.* 327 U. S. 274; *Malinski v. New York*, 324 U. S. 401; *Haley v. Ohio*, 332 U. S. 596; *Lee v. Mississippi*, 332 U. S. 742; *Watts v. Indiana*, 338 U. S. 49; *Turner v. Pennsylvania*, 338 U. S. 62; *Harris v. South Carolina*, 338 U. S. 68.

Conclusion

For the reasons stated, it is respectfully submitted that this petition for writ of certiorari should be granted.

Clyde Brown, Petitioner. Herman L. Taylor, Hosea V. Price, Harold T. Epps, Attorneys for Petitioner.

[fol. 289] BRIEF IN SUPPORT OF PETITION

Opinion Below

The opinion of the Supreme Court of North Carolina affirming the judgment and sentence imposed upon petitioner by the Superior Court of Forsyth County is reported at 233 N. C., 202; 63 S. E. 2nd 99.

Jurisdiction

The basis of this Court's jurisdiction are set forth in the accompanying petition at page 4 of said petition.

Specification of Error

1. It was error for the Trial Court to deny petitioner's motion to quash the bill of indictment, and, therefore, it was error for the Supreme Court of North Carolina to affirm the said judgment and sentence.

2. It was error for the Trial Court to admit in evidence the alleged confessions of petitioner, and therefore, it was error for the Supreme Court of North Carolina to affirm the judgment and sentence entered.

[fol. 290]

Summary of Argument

The limitation of the number of Negroes who are permitted to serve on grand and petit juries in Forsyth County, through invocation of what appears to be a "quota system," is in conflict with the equal protection of the laws provision of the Fourteenth Amendment to the United States Constitution, in that said practice results in, and has resulted in arbitrary exclusion of Negroes from such juries and a discrimination against members of said race, in particular, against this defendant. Although the Negro population has over the years constituted about 31.9 per cent of the total population of Forsyth County, it is an uncontroverted fact that over the same years, never has there been at any one time more than one Negro on a grand jury, nor more than four or five Negroes on a petit jury in Forsyth County, and even then such representation of Negroes on said juries has been intermittent. It is and should be more or less obvious, therefore, that were the same status applied and policies practiced in the selection of Negroes as jurors as is the case with jurors drawn from other racial groups, the law of averages alone would have precluded the situation which obtains and has obtained with respect to the constitution of juries in Forsyth County.

The alleged confessions of petitioner were obtained under circumstances which, when laid beside the measurements long promulgated by this Court, necessarily made them inadmissible. The undisputed facts show that the petitioner,

who is a young, illiterate, southern Negro, was arrested without a warrant in the early morning of June 19, 1950, and held in custody without formal charge until June 24, 1950, and was not given a preliminary hearing until July 7, 1950. All during the time of his unlawful detention, petitioner was repeatedly questioned for several hours at a time by police officers in relays until he made the statements purporting to be confessions, and no effort was made to provide petitioner with counsel or make counsel available to him until after he had been subjected to the said inquisitorial treatment. The admission into evidence, therefore, of confessions obtained under such circumstances, is in conflict with the due process clause of the Fourteenth Amendment to the United States Constitution.

[fol. 291] ARGUMENT

Point I

Petitioner has been Deprived of the Equal Protection of the Law by the Discriminatory and Arbitrary Exclusion of Negroes from (Grand and/or) Petit Juries in Forsyth County, Solely for Reason of Race, Including the Grand Jury which Indicted and the Petit Jury which Convicted Petitioner.

There is and can be no controversy with respect to the constitutional principle herein involved, as it is one that has long been established as the fundamental law. Consequently, the only issue that usually arises in this instance is whether or not the constitutional proscription involved has been disregarded. This Court is familiar with the statutes and procedure governing the selection of Grand and Petit Jurors in the State of North Carolina. Just about two and one-half years ago this Court had occasion, in a *per curiam* opinion of one word, to reverse five convictions arising out of the State of North Carolina, on the grounds that Negroes had been systematically and arbitrarily excluded from grand and petit juries in Forsyth County, North Carolina, the very same county from which the instant proceeding comes. *Brunson* v. *North Carolina*, 333 U. S. 851; *Jones* v. *North Carolina*, *id.*; *James* v. *North*

Carolina, id.; King v. *North Carolina, id.; Watkins* v. *North Carolina, id.* In each of the foregoing instances, Negroes were indicted by grand juries in Forsyth County on which there were no Negroes and under circumstances which revealed that for many years no Negroes had ever served on grand juries; also, in each instance, contrary to the instant situation, although Negroes were included on the convicting petit juries, the number of Negroes on such juries then and in the past years was disproportionately small to the number of Negroes residing in Forsyth County eligible for jury service. As has been hereinbefore set out, the instant proceeding arises out of the same county of the State of North Carolina as the *Brown, Jones, James,* and *Watkins* cases, to wit, Forsyth County. It is the conten-[fol. 292] tion of petitioner that the situation which obtained at the time of his trial represented an attempt on the part of the jury commissioners of Forsyth County to give only token compliance to mandate of this Court as set out in the aforenamed cases; that is, instead of approaching the inclusion of qualified Negroes on grand and petit juries in Forsyth County as a matter of general and ordinary jury selection procedure, petitioner contends that the facts in evidence and the circumstances herein show that the said jury commissioners have studied and purposefully limited the number of Negroes on grand juries to no more than one or two at a given time (R. 36-37), and the number of Negroes called to serve on petit juries to no more than four or five (R. 40-42). This Court has stated, in *Cassell* v. *Texas,* 339 U. S. 282, 286:

> "If . . . commissioners should limit proportionally the numbers of Negroes selected for grand jury service, such limitation would violate our Constitution."

And, at 287:

> "Proportional racial limitation is therefore forbidden. An accused is entitled to have charges against him considered by a jury in the selection of which there has been neither inclusion nor exclusion because of race."

See also *Virginia* v. *Rives,* 100 U. S. 322, 323.

The United States Census for 1940 discloses that the total population of Forsyth County was, as of said census, 126,475, consisting of 41,152 Negroes and 85,323 whites, the per cent of Negroes being 32.5% of the total. This census further shows that the total number of persons in Forsyth County 21 years of age and over were 75,556, of which 25,057 are Negroes, or approximately one-third of the total. It is thus apparent from the record, and it is a fact, that the foregoing proportion of Negroes in Forsyth County has never been even remotely reflected in the proportion of Negroes who have served on juries in Forsyth County. While it is an accepted principle that proportional representation of Negroes or any other racial group on every jury is not required, *Cassell* v. *Texas, supra,* disproportional representation of Negroes on juries in a given [fol. 293] community for a number of years, when considered in the light of the proportion of Negroes of the total population, is strong evidence of the violation of the rights claimed, and one would have to be unduly credulous to accept the argument that the inclusion of Negroes on jury panels in consistently and unvarying small numbers, such as one or two at a time, was solely the handiwork of chance. As this Court said in *Smith* v. *Texas,* 311 U. S. 128, 131:

> "Chance and accident alone could hardly have brought about the listing for grand jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service.

Although, the statute of the State of North Carolina (Gen. Stats. of N. C. 1943, Sec. 9-1) charges the commissioners of the several counties with the affirmative duty of resorting to the tax records of their respective counties and other sources for the purpose of fairly apprising themselves of the persons who are eligible for jury duty, the record in this case shows that the jury commissioners of Forsyth County, without further inquiry or consideration (R. 30, 37, 43) accepted as the jury panel for the period during which petitioner was indicted and tried a list of 40,000 names taken from the county tax records for the year 1948, which was tendered to them for this purpose,

(R. 30, 31, 43). At the same time, although the commissioners admittedly knowingly failed to resort to sources other than tax records to obtain the names of persons who were qualified for jury service, although the aforementioned statute provides for the same, they sought to justify the consistent paucity of Negroes on grand and petit juries in Forsyth County upon the ground that Negroes comprise only about 16% of the taxpayers in Forsyth County (R. 36, 48). And, even if such contention be conceded, it is an accepted and a recorded fact that representation of Negroes on juries in Forsyth County has never even approximated 16% of the persons called for jury service in said County. Irrespective of the decision of the state courts on the federal right which was set up and claimed, it is the province [fol. 294] of this Court to inquire not merely whether it was denied in express terms, but also whether it was denied in substance and effect. *Norris* v. *Alabama*, 294 U. S. 587, 590. Accordingly, whether a state law prescribes or does not prescribe a mode of jury selection which is designed to bring about equal protection of the laws in the administration thereof, as required by the Fourteenth Amendment, if the administrative agency which is charged with the duty of selecting juries pursues a course, either through design or ignorance, which in fact results in the arbitrary exclusion of members of a given race from such juries, an infraction of the Constitutional requirement thus results. *Neal* v. *Delaware*, 103 U. S. 370; *Carter* v. *Texas*, 177 U. S. 442.

It appears as a matter of deduction from the record that no Negro served on the trial jury which convicted petitioner (R. 24), and it further appears from the record that only one Negro was on the indicting grand jury (R. 39), in continuing observance of what petitioner contends is a studied and purposeful program of limiting the number of Negroes on grand and petit juries in Forsyth County. It is unquestioned that indictment and conviction of a Negro by a grand and petit jury from which Negroes have been purposefully excluded solely for reasons for race deprives that defendant of equal protection of the laws. *Strauder* v. *West Virginia*, 100 U. S. 303; *Neal* v. *Delaware*, *supra*; *Bush* v. *Kentucky*, 107 U. S. 110; *Norris* v. *Alabama*, *supra*; *Hale* v. *Kentucky*, 303 U. S. 613; *Pierre* v. *Louisiana*, 306 U. S. 354;

Smith v. *Texas, supra; Hill* v. *Texas*, 316 U. S. 400; *Patton* v. *Mississippi*, 332 U. S. 463; *Brunson et als.*, v. *North Carolina, supra.* Purposeful exclusion is shown even where some Negroes do serve as jurors if the proportion of Negroes on juries is infinitesimal in comparison with the proportion of Negroes in the community eligible to act as jurors. *Pierre* v. *Louisiana, supra; Smith* v. *Texas, supra.* The essential inquiry is not whether Negroes are proportionally represented on any one jury, but whether a historical pattern of Negro participation on juries demonstrates deliberate exclusion. *Patton* v. *Mississippi, supra; Akins* v. *Texas*, 325 U. S. 398. It is submitted, therefore, that the facts in this case and the applicable law forcefully [fol. 295] demonstrate that petitioner was denied equal protection of the laws in this instance and that the state courts committed error in denying his motion to quash the bill of indictment and the trial jury panel.

Point II

The Conviction of Petitioner Deprives Him of His Life and Liberty Without Due Process of Law in View of the Admission Into Evidence of His Alleged Confessions.

The alleged assault and rape of the prosecuting witness, Betty Jane Clifton, a young high school girl, occurred on June 16, 1950. The defendant, Clyde Brown was reported by witnesses for the state to have been seen in the vicinity of the radio shop in which the incident occurred at or around the time of its alleged occurrence (R. 82 et seq.). The petitioner was arrested without a warrant and held for questioning in connection with the crime at or around 12:30 a.m. on the morning of June 19th (R. 96). The undisputed evidence is that the defendant was held in custody until the 24th day of June, 1950 before he was formally charged with the commission of the crime and was not given a preliminary hearing in connection therewith until the 7th day of July, 1950, more than 18 days after his apprehension. (R. 95 et seq.). It is also undisputed that during the time he was held in custody, the defendant was questioned repeatedly and persistently by police officers of the City of Winston-Salem in relays until they succeeded in obtaining from petitioner the sort of confession they

desired (R. 95 et seq.). Although the officers contended that they warned petitioner of his rights, they made no effort to obtain counsel for petitioner until they had carried him through a searing inquisition and he had given them the incriminating statements.

General Statutes of North Carolina, 1943, Sec. 15-46 provides:

> "Every person arrested without warrant shall be either immediately taken before some magistrate having jurisdiction to issue a warrant in the case, or else be [fol. 296] committed to the county prison, and, as soon as may be, taken before such magistrate who, on proper proof, shall issue a warrant and thereon proceed to act as may be required by law."

Although specifically enjoined so to do by the foregoing statutory provision, as has been hereinbefore set out, the officers who took petitioner into custody held him from the 19th day of June until the 24th day of June, a period of 5 days, without formally charging him with crime, and from the 19th day of June until the 7th day of July, a period of about eighteen days, before granting him a preliminary hearing (R. 98, 99). It is thus apparent that during the time petitioner was continually questioned and at the time the incriminating statements were elicited, he was being detained in violation of the laws of the State of North Carolina.

While the officers who had petitioner in custody contended that they advised him of his right, including the right to consult with counsel, it is apparent from the record, as aforesaid, that counsel was not made available to petitioner until after the incriminating statements had been made. In determining whether or not the warning allegedly given petitioner, even if it should be conceded that such warning was given, meets the requirements of due process, it is submitted that this Court should take into consideration as a part of the circumstances the lack of intelligence on the part of the defendant as will certainly be revealed from a careful persual on the whole record. A bald statement by officers to one of petitioner's intelligence and background in a situation of this kind that he has certain rights,

knowing that he is in no position to avail himself of such rights without the affirmative help of his admonishers, it is submitted, becomes a vain and useless act. Petitioner does not contend that the incriminating statements were obtained through physical violence, but he does contend that they were induced by the coercive circumstances set out in the record, and as such are similarly inadmissible.

Since *Brown v. Mississippi*, 297 U. S. 278, it has been the undeviating practice of this Court to reverse convictions after trials in which there was admitted into evidence confessions induced by physical and mental coercion. *Cham-*
[fol. 297] *bers v. Florida*, 309 U. S. 227; *Canty v. Alabama*, 309 U. S. 629; *White v. Texas*, 309 U. S. 631; *id.*, 310 U. S 530; *Lomax v. Texas*, 313 U. S. 544; *Vernon v. Alabama*, 313 U. S. 547; *Ward v. Texas*, 316 U. S. 547; *Ashcraft v. Tennessee*, 322 U. S. 143; *id.*, 327 U. S. 274; *Malinski v New York*, 324 U. S. 401; *Haley v. Ohio*, 332 U. S. 596; *Lee v. Mississippi*, 332 U. S. 742; *Watts v. Indiana*, 338 U. S. 49; *Turner v. Pennsylvania*, 330 U. S. 62; *Harris v. South Carolina*, 338 U. S. 68. In view of the fact that it is apparent from the record that, aside from the alleged confessions, a conviction of petitioner would have to rest upon flimsy and doubtful circumstance evidence, it is submitted that it is particularly appropriate for this Court to review the facts herein to determine independently whether they spell out the type and sort of coercion which the foregoing authorities have determined to be unlawful.

Ward v. Texas, 316 U. S. 547, 555, provides the point of departure for evaluating the undisputed and uncontradicted evidence which exists in this case, for in that case Byrnes, J., stated the applicable criteria:

> "This Court has set aside convictions based upon confessions extorted from ignorant persons who have been subjected to persistent and protracted questioning, or who have been threatened with mob violence, or who have been unlawfully held incommunicado without advice of friends or counsel, or who have been taken at night to lonely and isolated places for questioning. *Any one of these grounds would be sufficient cause for reversal.*" (Emphasis added).

The youthful age of petitioner (*Chambers v. Florida, supra; Haley v. Ohio, supra*); his illiteracy (*Harris v. South Carolina, supra; White v. Texas, supra*); brutality of the crime involved (*Chambers v. Florida, supra; Ward v. Texas, supra*); his detention without hearing or arraignment. (*Harris v. South Carolina, supra; Turner v. Pennsylvania, supra; Watts v. Indiana, supra; Haley v. Ohio, supra*), and without any communication with friends or counsel (*Harris v. South Carolina, supra; Ashcraft v. Tennessee, supra; White v. Texas, supra; Chambers v. Florida, supra*); and the harrowing questioning which led up to the alleged confessions, all combined to make those confessions tainted and constitutionally inadmissible.

[fols. 298-302] It is well settled that even where proof apart from a confession in evidence might be deemed sufficient to found a conviction, although, as aforesaid, such is not the case here, such proof will not influence the necessity for reversing a judgment of conviction where the confession was involuntary or coerced. *Haley v. Ohio, supra,* at 599; *Malinski v. New York, supra,* at 404.

It is submitted, therefore, that the state courts errored in admitting said confessions in evidence.

Conclusion

The petition for writ of certiorari should be granted, and upon review the judgment of conviction and sentence should be reversed.

Respectfully submitted, Herman L. Taylor, Hosea V. Price, Harold T. Epps, Attorneys for Petitioner.

[fol. 303] [File endorsement omitted]

EXHIBIT 7 TO ANSWER—Filed July 5, 1951

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950.

No. 488, Misc.

CLYDE BROWN, Petitioner,

vs.

THE STATE OF NORTH CAROLINA, Respondent

Brief of the State of North Carolina, Respondent, Opposing Petition for Writ of Certiorari

STATEMENT OF THE CASE

The Petitioner, Clyde Brown, seeks by writ of *certiorari* to have the Supreme Court of the United States review a decision of the Supreme Court of North Carolina affirming a judgment of the Superior Court of Forsyth County, North Carolina, imposing sentence of death upon the Petitioner based upon a conviction for the crime of rape. The opinion of the Supreme Court of North Carolina was filed February 2nd, 1951, and is reported as State v. Clyde Brown, 233 N. C. 202, 63 S. E. (2d) 99.

[fol. 304] Facts

The record before the Supreme Court of North Carolina has been certified to this Court, and we will refer to the record by the initial "R" and by using the usual initial "p" for the page number.

On June 16, 1950, the Petitioner, Clyde Brown, a Negro man, went into the radio shop of Thomas E. Clifton on West Seventh Street, in Winston-Salem, and raped his daughter, Betty Jane Clifton, a high school girl in the eleventh grade. The victim of this assault, Betty Jane Clifton, was cruelly beaten and maltreated in a fiendish manner and was taken to the hospital where she remained unconscious and hovered between life and death for many days. (See R. pp. 93, 60, 61 and 62. See evidence of Dr. Dale on R. p. 70. See evidence

of nurse Nancy Strader on R. p. 179.) The Petitioner beat the victim, Betty Jane Clifton, with a rifle and perhaps other weapons, and there was no doubt but what she was raped because blood flowed from her private parts and soiled her underclothes, and doctors testified that penetration had been accomplished. (See evidence of Dr. Harry W. Goswick on R. p. 60 and Dr. F. P. Dale on R. p. 70). The victim, Betty Jane Clifton, remembered very little about what happened as will be seen from her evidence beginning on R. p. 78.

The Petitioner, Clyde Brown, was seen in the vicinity of the radio shop close to the happening of this event as will be seen by the evidence beginning on R. p. 82. The Petitioner was arrested and held for some time for investigation. He told various stories of his whereabouts and persons he had seen and talked with, which were investigated patiently by the police officers of Winston-Salem and were found to be untrue. He finally sent for the officers of his own accord and admitted that he went into the radio shop and assaulted, beat and raped Betty Jane Clifton. As is customary in a case of this kind, the police officers gave evidence on the question of the competency of the Petitioner's confession, and the police officers likewise testified before the jury after the confession had been ruled upon, and the Judge found that the same should be submitted to the [fol. 305] jury, all according to the practice that prevails in this State. For the various stories that the Petitioner told, as well as his confession, we refer the Court to the evidence of the officers beginning on R. p. 135 and extending continuously through R. p. 166.

The Petitioner, during this time, told the police officers where to find the clothes which he had worn on this occasion (R. p. 42); and he also told the officers where to find the billfold that belonged to the victim, Betty Jane Clifton, and the officers went and found the billfold hidden in the place as related by the Petitioner. (R. p. 147)

Argument

I

Petitioner Has Not Shown Intentional, Arbitrary and Systematic Exclusion of Eligible Persons of His Race from Grand Jury Service

The Petitioner's motion to quash the bill of indictment because of race exclusion from the Grand Jury will be found on R. p. 22. It will be seen that the Petitioner does not allege in any manner in what way members of his race were excluded in violation of his constitutional rights. The only specific thing he alleges is that the Grand Jury was drawn "with a view to and purpose in mind of systematically limiting representation thereon of Negroes or persons of African descent."

We submit that the allegations in this motion are of such a general nature that they do not even meet the liberal requirements of criminal pleading. Certainly the grounds upon which a motion to quash is based should be set forth in some detail, and such is the holding in many jurisdictions.

Shreve v. U. S., 77 Fed. (2d) 2;
Colbeck v. U. S., 10 Fed. (2d) 401;
Whitman v. State, 122 So. 567 (Fla.);
State v. Ellington, 96 So. 529 (La.);
[fol. 306] Boyd v. State, 143 N. E. 355 (Ind.);
People v. Damazoni, 223 P. 1003 (Okl.);
State v. Skinner, 230 P. 537 (Wyo.);
State v. DeBoard, 194 S. E. 349 (W. Va.);
Ingham v. State, 172 N. E. 401 (Ohio);
Deibert v. State, 133 A. 847 (Md.).

After the Petitioner had been convicted, he again attempted to raise the question of jury discrimination in more detail by a motion in arrest of judgment. (R. pp. 205, 206 and 207.) The question of jury discrimination cannot be raised in North Carolina by a motion in arrest of judgment.

State v. Brown, 233 N. C. 202, 63 S. E. (2d) 99;
State v. Brown, 218 N. C. 415, 11 S. E. (2d) 321;
State v. McCollum, 216 N. C. 737, 6 S. E. (2d) 503;
State v. Linney, 212 N. C. 739, 194 S. E. 470.

Although there was not sufficient allegation in the motion to quash, the Petitioner was allowed to introduce evidence for the purpose of showing, if he could, that the Board of County Commissioners had not properly and constitutionally administered the jury statute for the selection of the Grand Jury which indicted him. We think the Petitioner failed to do this, and we will attempt to show the Court our reasons.

The Petitioner shows the total population of both white and colored by the Census of 1940 and 1950, and the poll tax listings for the year of 1950; but it will be noted that no figures are shown for the total tax listings, and the jury list was made up by the Commissioners from the total tax listings. *It will further be seen from the evidence of Howard W. Floyd, the Courtroom Clerk, that one Negro woman, Mrs. Mary Y. Matthews, served on the Grand Jury that found the bill against the defendant.* (*See R. pp. 38 and 39.*) This present Grand Jury was drawn at the meeting of June, 1950, when sixty names were drawn from which the Grand Jury was taken which found this bill. (R. p. 45.) It will also be seen from the evidence of Nat S. Crews, the [fol. 307] County Attorney, that he attended all of the meetings and that there had been no discrimination between white and colored people in the selection of the jury. On R. p. 46 will be found the public-local act under which the jury is drawn in Forsyth County. It will be seen that the Grand Jury of Forsyth County is drawn on the 25th day of June of each year so that the Grand Jury serves for a term of six months. The Court will also see from evidence of Howard W. Floyd, beginning on R. p. 38, that several members of the colored race were drawn on the jury, and on R. p. 42 he testifies that he has yet to see a jury in the box in the courtroom in Forsyth County when there was not at least one member of the Negro race on the jury. *On R. p. 24 it is agreed in a stipulation between counsel that out of the thirty-seven regular jurors called, there were at least eight members of the Negro race and that out of the special veniremen called, at least three were members of the Negro race.* When we bear in mind also that there was one Negro woman who served on the Grand Jury that found the bill of indictment against the Petitioner, it is hard to see that there

has been any jury discrimination against the eligible colored jurors.

It further appears from the evidence of John Click, who is the I. B. M. Supervisor in the office of the Tax Supervisor of Forsyth County, that he furnished the Register of Deeds' office a list of all people eligible for jury duty according to the tax records. This list is compiled by the I. B. M. machine by running the cards through the machine, and a list is thus tabulated with all of the names and addresses. Juveniles are excluded and nonresidents, as well as deceased persons. This list is tabulated every two years. These cards are not separated as to white and colored taxpayers, but there is a code number on the card which allows colored taxpayers to be separated from white taxpayers if desired. The County Commissioners, however, do not follow the code, and only people who are familiar with the I. B. M. procedure would know what the code number indicated. There is no evidence whatsoever that any distinction was made in the drawing of the jury, and this is shown [fol. 308] not only by the Petitioner's own witnesses but also by the State's evidence which begins on R. p. 40. All of the witnesses who had anything to do with the jury list testified that there had been no exclusion of anyone because of race, and the Petitioner did not place upon the witness stand a single person of the colored race who was eligible to serve on the jury but who had never been called for jury duty.

The fact that in this case there was a code designation on the I. B. M. cards and on the list which separated the colored and white persons does not show discrimination.

State v. Walls, 211 N. C. 487 (Certiorari denied in 302 U. S. 635, 82 L. Ed. 494);
State v. Middleton, 36 S. E. (2d) 472 (S. C.);
U. S. v. Dennis, 183 Fed. (2d) 201 (Ad. Op. No. 3).

In the case of U. S. v. Dennis, *supra*, which is the famous trial of the Communists in New York, Mr. L. Hand, Circuit Judge, writing the opinion of the Court for the Second Circuit, on this point, said:

"Nothing need be added, regarding the asserted discrimination against Negroes. So far as they were not

represented on the list in proportion to their numbers, there is no evidence that it was on account of their race; and the disproportion is adequately explained by the fact that they are among the poorer groups. The argument drawn from the presence of the letter 'C' on their cards is without basis; it is understandable why the clerks should wish to know how many Negroes were on the list. The very fact that the Supreme Court had several times decided that they must be represented was occasion enough; any clerk would wish to avoid any color of a charge that he had discriminated against them. Had the list been drawn up for this particular prosecution, there might be some plausibility in finding a motive for keeping down the possibilities of Negroes on the jury, so great have been the wrongs done that race; but only a jaundiced mind can suppose that a public official in New York, having no personal stake in the event, would hazard the risk of detection for the sake of venting his bias against the race generally."

[fol. 309] We must call attention again to the fact that the Petitioner has not shown that any colored persons were available for jury duty that had not served or that had been excluded. As we will show later on, the burden was on the Petitioner to make this showing, and the Petitioner has not shown the long-continued exclusion, the purposeful, intentional, arbitrary exclusion of eligible representatives of the Negro race which warrants the inference or prima facie case requiring proof and rebuttal on the part of the State. For example, in the case of Norris v. Alabama, 294 U. S. 597, 79 L. Ed. 1074, the Petitioner placed upon the witness stand many members of the Negro race who were eligible for jury service but who had never served on the jury during their life-time.

It is not denied that under the Fourteenth Amendment, the eligible citizens of Petitioner's race are entitled to their chance to serve on the various juries and cannot be deprived of this chance by design. But fairness in selection does not require a guaranteed proportional representation

of the Petitioner's race on every jury selected and constituted.

Cassell v. Texas, — U. S. —, 94 L. Ed. 563 (Ad. Op. No. 13);
Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692;
Thomas v. Texas, 212 U. S. 278, 53 L. Ed. 512;
Virginia v. Rives, 100 U. S. 313, 25 L. Ed. 667;
Swain v. State, 215 Ind. 259, 18 N. E. (2d) 921, 926;
Zimmerman v. State, — Md. —, 59 A. (2d) 6[illegible] (Certiorari denied, 93 L. Ed. (Ad. Op. No. 7) 425);
16 C. J. S. (Constitutional Law), Sec. 540.

The type of discrimination condemned is said to be "purposeful discrimination" (Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692), or a "long-continued, unvarying, and wholesale exclusion of Negroes from jury service" (Norris v. Alabama, 294 U. S. 587, 79 L. Ed. 1074). There is a presumption that officers in charge of jury selection have performed their duty fairly and justly (Tarrance v. Florida, [fol. 310] 188 U. S. 519, 47 L. Ed. 572, 116 So. 470 (Fla.), Certiorari denied in 278 U. S. 599, 73 L. Ed. 525) and without discrimination against race or class. The burden of proof is upon Petitioner to show an alleged discrimination in the selection of a grand or petit jury (Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692; Murray v. Louisiana, 163 U. S. 101, 41 L. Ed. 87).

In Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692, the Court uses the words "purposeful discrimination." In Norris v. Alabama, 294 U. S. 587, 79 L. Ed. 1074, the Court uses the words "long-continued, unvarying, and wholesale exclusion of Negroes from jury service."

It is very generally held that the burden of proof is on the Petitioner or Petitioners to show an alleged discrimination in the selection of a grand or petit jury.

Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692;
Murray v. Louisiana, 163 U. S. 101, 41 L. Ed. 87.

There is a presumption that officers in charge of the selection and summoning of a jury or jury panel will be presumed to have performed their duty fairly and justly without discrimination against any race or class. In other

words, discrimination in the selection of a jury will not be presumed.

Tarrance v. Florida, 188 U. S. 519, 47 L. Ed. 572, 116 So. 470 (Fla.) (Certiorari denied in 278 U. S. 599, 73 L. Ed. 525.)

Fairness in selection has never been held to require proportional representation of race upon a jury.

Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692;
Virginia v. Rives, 100 U. S. 313, 25 L. Ed. 667;
Thomas v. Texas, 212 U. S. 278, 53 L. Ed. 512.

A Petitioner has no constitutional right to be indicted or tried by any particular jury or by a jury composed in part of members of his race or class.

[fol. 311] State v. Peoples, 131 N. C. 784, 42 S. E. 814;
State v. Sloan, 97 N. C. 499;
State v. Logan, 341 Mo. 1164, 111 S. W. (2d) 110 (1937);
Martin v. Texas, 200 U. S. 316, 50 L. Ed. 494.

"It is unsafe, we think, to attach too much significance to abstract, mathematical ratios or to the so-called law of recurrences in determining whether there has been arbitrary discrimination in the selection of juries."

Swain v. State, 215 Ind. 259, 18 N. E. (2d) 921, 926.

The State contends, therefore, that the Petitioner has not met the burden imposed upon them and as required by the principles stated in the case of Faye v. New York, 322 U. S. 261, 91 L. Ed. 2043, where this Court said:

"It is fundamental in questioning the composition of a jury that a mere showing that a class was not represented in a particular jury is not enough; there must be a clear showing that its absence was caused by discrimination, and in nearly all cases it has been shown to have persisted over many years. Virginia v. Rives, 100 U. S. 313, 322, 323 L. Ed. 667, 670, 671; Martin v. Texas, 200 U. S. 316, 320, 321, 50 L. Ed. 497, 498, 499, 26 S. Ct. 338; Thomas v. Texas, 212 U. S. 278, 282, 53 L. Ed. 512, 513, 29 S. Ct. 393; Smith v. Texas, 311 U. S.

128, 85 L. Ed. 84, 61 S. Ct. 164; Hill v. Texas, 316 U. S. 400, 86 L. Ed. 1559, 62 S. Ct. 1159; Akins v. Texas 325 U. S. 398, 89 L. Ed. 1692, 65 S. Ct. 1276, supra. Also, when discrimination of an unconstitutional kind is alleged, the burden of proving it purposeful and intentional is on the defendant: Tarrance v. Florida, 188 U. S. 519, 47 L. Ed. 572, 23 S. Ct. 402; Martin v. Texas, 200 U. S. 316, 50 L. Ed. 497, 26 S. Ct. 338; Norris v. Alabama, 294 U. S. 587, 79 L. Ed. 1074, 55 S. Ct. 579; Snowden v. Hughes, 321 U.S. 1, 8, 9, 88 L. Ed. 497, 502, 503, 64 S Ct. 397; Akins v. Texas, 325 U. S. 398, 400, 89 L. Ed. 1692, 1694, 65 S. Ct. 1276."

Under the North Carolina practice, the questions raised by the Petitioner's motion ~~to quash~~ are in the first instance [fol. 312] heard and decided by the trial Court. The trial Court makes findings of fact; and in the absence of an abuse of discretion or in the absence of lack of evidence to support findings, such decision of the trial Court is ordinarily binding upon the Supreme Court of North Carolina. This practice is illustrated by the following cases:

State v. Speller, 229 N. C. 67, 47 S. E. (2d) 537;
State v. Kirksey, 227 N. C. 445, 42 S. E. (2d) 613;
State v. Lord, 225 N. C. 354, 34 S. E. (2d) 205;
State v. Henderson, 216 N. C. 99, 3 S. E. (2d) 57;
State v. Bell, 212 N. C. 20, 192 S. E. 852;
State v. Walls, 211 N. C. 487 (Certiorari denied 302 U. S. 635, 58 S. Ct. 18, 82 L. Ed. 494), 191 S. E. 232;
State v. Cooper, 205 N. C. 657, 172 S. E. 199;
State v. Peoples, 131 N. C. 784, 42 S. E. 814;
State v. Daniels, 134 N. C. 641, 46 S. E. 743.

While it is recognized by the State that on a question of this kind, the findings of the trial Court are not final, nevertheless, great weight is to be accorded the trial Court's decision because such Court make the initial investigation and has a greater opportunity to investigate the facts.

Thomas v. Texas, 212 U. S. 278, 53 L. Ed. 512;
Akins v. Texas, 325 U. S. 398, 89 L. Ed. 1692.

II

Petitioner Has Not Shown That the North Carolina Statute for the Selection of Grand Jurors is in Itself Unconstitutional.

The Petitioner's whole argument in the Supreme Court of North Carolina, as will be seen from his brief filed before that Court, was to the effect that the Board of Commissioners of Forsyth County only resorted to the tax lists to secure the names of jurors but did not resort to "a list of names of persons who do not appear upon the tax lists, who are residents of the county and over twenty-one years of [fol. 313] age,". In other words, the Petitioner's argument was, in effect, that had the Commissioners secured other lists of names, there would have been more colored people appearing on the jury list. This, of course, he does not substantiate in any way by showing that there were any eligible Negroes whose names did not appear on the tax lists. The Supreme Court of North Carolina construed the statute and decided that the resort to the lists of names outside of the tax lists was directory only.

State v. Brown, 233 N. C. 202, 63 S. E. (2d) 99.

The State of North Carolina had a right to construe its own statute and to decide what was the correct interpretation of the same.

Buchalter v. New York, 319 U. S. 427; 87 L. Ed. 1492;
Howard v. Fleming, 191 U. S. 126; 48 L. Ed. 121;
Howard v. Kentucky, 200 U. S. 164; 50 L. Ed. 421;
Twining v. New Jersey, 211 U. S. 78; 53 L. Ed. 97;
Snyder v. Massachusetts, 291 U. S. 97; 78 L. Ed. 674;
Chaplinsky v. New Hampshire, 315 U. S. 568, 574; 86 L. Ed. 1031, 1036.

We wish to call the attention of the Court to Stipulation of Counsel which appears on R. p. 24 which relates the facts as to the number of Negroes appearing among the regular jurors called for the trial panel and the number of Negroes appearing among the special veniremen called for the trial panel. It will also be seen from the addendum to the record which has been certified to this Court that one Negro was

tendered to the Petitioner as a trial juror, and the Petitioner refused to accept him.

[fol. 314]

III

The Petitioner's Constitutional Rights Were Not Violated by the Admission of His Confession in Evidence.

First of all, it should be made clear to the Court that the Petitioner himself, by his own evidence, explicitly states that he was not ill treated, that he received all of the elementary needs of life, such as food and water, and that no coercion was used against him. On R. pp. 122 and 123, the Petitioner testified as follows:

"Q. Clyde, let me ask you a question. From the time you were put in custody on the 19th of June, up until after Mr. Price was employed, came over there to the jail to see you, after you made all the statements you made in this case, were you ever mistreated in any manner by these officers, any of the officers?

"A. No.

"Q. Was any violence used or threatened to be used against you?

"A. No sir.

"Q. Did anybody hit you or threaten to hit you?

"A. No sir.

"Q. Did anybody threaten to do you any physical injury of any kind?

"A. No sir.

"Q. Did anybody offer you any reward or hope of reward to make any statement?

"A. No sir.

"Q. Did anybody tell you that you'd get out lighter, they'd try to help you get out lighter if you'd make a statement?

"A. No.

"Q. And were you, at different times—at least on two occasions, I believe you said—warned that you did not have to make a statement?

[fol. 315] "A. Yes sir.

"Q. You were warned at least once before you made this final statement? Is that correct?

"A. Yes sir.

"Q. At that time you were told that any statement which you might make would be used against you?

"A. Yes sir."

We think it is clear that the officers had a right to arrest the Petitioner without warrants and to hold him for investigation, and as authority for this position, we call the attention of the Court to the following North Carolina statutes:

"§ 15-41. *When officer may arrest without warrant.*—Every sheriff, coroner, constable, officer of police, or other officer, entrusted with the care and preservation of the public peace, who shall know or have reasonable ground to believe that any felony has been committed, or that any dangerous wound has been given, and shall have reasonable ground to believe that any particular person is guilty, and shall apprehend that such person may escape, if not immediately arrested, shall arrest him without warrant, and may summon all bystanders to aid in such arrest."

"§ 15-42. *Sheriffs and deputies granted power to arrest felons anywhere in state.*—When a felony is committed in any county in this State, and upon the commission of the felony, the person or persons charged therewith flees or flee the county, the sheriff of the county in which the crime was committed, and/or his bonded deputy or deputies, either with or without process, is hereby given authority to pursue the person or persons so charged, whether in sight or not, and apprehend and arrest him or them anywhere in the State."

"§ 15-46. *Procedure on arrest without warrant.*—Every person arrested without warrant shall be either immediately taken before some magistrate having jurisdiction to issue a warrant in the case, or else committed to the county prison, and, as soon as may be, taken before such magistrate, who, on proper proof, [fol. 316] shall issue a warrant and thereon proceed to act as may be required by law."

"§ 15-47. *Arresting officer to inform offender of charge, allow bail except in capital cases, and permit*

communication with counsel or friends.—Upon the arrest, detention, or deprivation of the liberties of any person by an officer in this state, with or without warrant, it shall be the duty of the officer making the arrest to immediately inform the person arrested of the charge against him, and it shall further be the duty of the officer making said arrest, except in capital cases, to have bail fixed in a reasonable sum, and the person so arrested shall be permitted to give bail bond; and it shall be the duty of the officer making the arrest to permit the person so arrested to communicate with counsel and friends immediately, and the right of such persons to communicate with counsel and friends shall not be denied.

"Any officer who shall violate the provisions of this section shall be guilty of a misdemeanor and shall be fined or imprisoned, or both, in the discretion of the court."

The last above-quoted statute (§ 15-47) has been construed by the Supreme Court of North Carolina in the case of State v. Exum, 213 N. C. 16, 195 S. E. 7, wherein the Court said:

"The evidence at the trial shows that immediately after his arrest, the defendant was informed by the sheriff that he was charged with the murder of James Williams. This is a capital case. For this reason the provisions of the statute with respect to bail are not applicable to this case.

"There is no evidence in the record tending to show that after his arrest and while he was in the custody of the sheriff the defendant demanded of the sheriff that he be permitted to communicate with friends or with counsel. For this reason the provisions of the statute with respect to the right of a defendant in the custody of an officer and charged with the commission of a crime, to communicate with friends and counsel are not applicable to this case.

[fol. 317] "Conceding, however, that the sheriff had violated the provisions of the statute, in the instant case, it would not follow that a voluntary confession

made by the defendant to the sheriff would be inadmissible as evidence because of such violation. It is not so provided in the statute."

The mere detention and questioning of a suspect is not prohibited either at common law or under the due process clause.

Lyons v. Oklahoma, 322 U. S. 596, 88 L. ed. 1481;
Lisenba v. California, 314 U. S. 219, 239-241, 86 L. ed. 166, 181, 182.

Even if it should be considered that the detention of the Petitioner was illegal, this does not necessarily become decisive on the question of the voluntariness of Petitioner's confession; and if it should be decided that Petitioner was detained contrary to law, this does not, of itself, decide the issue in Petitioner's favor.

Lisenba v. California, 314 U. S. 219, 86 L. ed. 166, 179.

All of the cases cited and relied upon by Petitioner either show long continued questioning in relays by officers, brutal treatment, threats or combinations of these factors, plus illegal detention. We briefly survey these cases.

Hailey v. Ohio, 332 U. S. 596; 92 L. ed. 224? The petitioner, a boy of fifteen years old, was questioned for five hours by police in relays by one or two each. He was shown an alleged confession of his co-defendants. A lawyer tried to see him twice but was refused admission by police. His mother testified that his clothes were torn and bloodstained.

Malinski v. New York, 324 U. S. 401, 89 L. ed. 1029: Malinski was not allowed to see his attorney although he asked for him. Malinski was held in a hotel room from 8:00 o'clock A. M. to 6:00 P. M., then held in a hotel for that night and for the next three days. He was questioned at various times and made various confessions. There is no compari-
[fol. 318] son in the facts in the Malinski case and in the present case.

Asheraft v. Tennessee, 322 U. S. 143, 88 L. ed. 1192: The petitioner was subjected to a thirty-six-hour period of practically continuous questioning, seated under powerful electric lights. This questioning was done by relays of

officers and experienced investigators. There is no comparison in this case to the facts now before the Court.

Lyons v. Oklahoma, 322 U. S. 596, 88 L. ed. 1481: Here the petitioner had made a confession which was admittedly involuntary and illegal. He afterwards made another confession, which it was contended was voluntary. The primary question considered in the opinion was the effect of the first confession on the second confession.

McNabb v. U. S., 318 U. S. 332, 87 L. ed. 819: The petitioner in this case was questioned by numerous officers over a period of two days. This case came from a lower Federal Court, and no constitutional issue was decided. The case is not an authority in evaluating the constitutionality of confessions used in State Courts.

Ward v. Texas, 316 U. S. 547, 86 L. ed. 1663: Here the petitioner was arrested without a warrant by a sheriff from another county; he was removed to a county more than one hundred miles away and for three days was driven about from county to county and questioned continuously by various officers who told him of threats of mob violence, and there was little probability of such event. The sheriff testified that he saw evidence of cigarette burns on the petitioner's body.

Lisenba v. California, 314 U. S. 219, 86 L. ed. 166: The petitioner in this case was held incommunicado for a long period of time, was refused counsel and questioned from Sunday night until Tuesday morning. The petitioner made two confessions, one of which was not admitted, but the second one was ruled to be valid.

White v. Texas, 310 U. S. 530, 84 L. ed. 1342: Here the petitioner, an illiterate farm hand, was held in jail for several days without counsel and out of touch with friends. For several nights, he was taken, handcuffed, by armed officers into the woods for interrogation. In jail, the pet- [fol. 319] tioner was placed by himself, where the sheriff kept watching the petitioner and talking to him. A confession was obtained after questioning by the county attorney from 11:00 P. M. to 3:30 A. M. the next morning. During this period, the officers who had taken him to the woods were in and out of the room.

Chambers v. Florida, 309 U. S. 227, 84 L. ed. 716: Here

a group of young Negroes were arrested and held in jail without formal charges. They were not permitted to see counsel or friends, and believing that they were in danger of mob violence, made confessions at the end of an all-night session, following five days of questioning, each by himself, by State officers and other white citizens and in the presence of from four to ten white men, and after a previous confession had been pronounced "unfit" by the prosecuting attorney.

Brown v. Mississippi, 297 U. S. 278, 80 L. ed. 682: In this case, there was undenied brutality, such as whipping the petitioner, hanging and then taking him down, and his body showed marks of other brutal treatment.

Wan v. U. S., 266 U. S. 1, 69 L. ed. 131: In this case, the petitioner was subjected to continuous examination for seven days by police officers, and which examination on one occasion continued throughout the night. The petitioner was sick and in pain, and the medical examiner testified that the petitioner would have confessed in order to secure relief. This was a Federal case.

Watts v. Indiana, 338 U. S. 49, 69 S. Ct. 1347: The petitioner Watts had been held for six days, during which time, except for Sunday, he was questioned by relays of officers from 5:30 or 6:00 P.M. until 2:00 or 3:00 A.M. He was not taken before a magistrate, as required by Indiana law, and was not advised of his constitutional rights.

Turner v. Penna., 338 U. S. 62, 69 S. Ct. 1352: Turner was questioned by relays of officers from four to six hours a day for five days. He was not permitted to see friends or relatives and was not informed of his right to remain silent.

Harris v. South Carolina, 338 U. S. 68, 69 S. Ct. 1354: Harris was held in jail for several days, during which time [fol. 320] he was questioned, and on one night, five officers worked in relays. On the next night, the questioning continued under the same conditions from 1:30 in the afternoon until past one the following morning; and on Wednesday

afternoon, the Chief of the State Constabulary, with a half-dozen of his men, questioned Harris for an hour, and the local officers then questioned Harris for three and one-half hours longer. The sheriff then threatened to arrest petitioner's mother for having stolen property, and petitioner confessed.

The Petitioner quotes from the next to the last paragraph in the opinion in Ward v. Texas, 316 U. S. 547, 86 L. ed. 1663, in which the Court lays down a series of factors or tests and states that any one of the grounds would be sufficient cause for reversal. *The Court will see from an examination of the cases cited in the note to support this proposition that there were always combinations of brutality or persistent questioning plus, in some cases, illegal detention or threats of mob violence. The point is that in each of the cases cited to uphold the paragraph, the facts reveal combinations of these situations, and the cases are not decided on any one single point.* The cases of Canty v. Alabama, 309 U. S. 629, 84 L. ed. 988; Lomax v. Texas, 313 U. S. 544, 85 L. ed. 1511; and Vernon v. Alabama, 313 U. S. 547, 85 L. ed. 513, were disposed of by *per curiam* opinions, and no recitals of the facts are given.

We say, therefore, that where the findings of the State Court are supported by substantial evidence, the same should be upheld, and, in fact, as determined by the cases of Lisenba v. California, *supra*, and Lyons v. Oklahoma, *supra*, the same are final unless unconstitutionality is shown by admitted facts.

Conclusion

The Respondent, State of North Carolina, therefore, contends that the Petitioner has not brought himself within the rulings of this Court which allow his case to be considered upon application for *certiorari* because of the alleged constitutional questions asserted by him.

[fol. 321] Respectfully submitted, Harry McMullan, Attorney General; Ralph Moody, Assistant Attorney General, Counsel for the State of North Carolina, Respondent.

[fol. 322]

Appendix

Chapter 9, General Statutes of North Carolina—Jury

Section 9-1. The board of county commissioners for the several counties, at their regular meetings on the first Monday in June in the year 1947, or the jury commissions or such other legally constituted body as may in the respective counties be charged by law with the duty of drawing names of persons for jury service, at the times of their regular meetings, and every two years thereafter, shall cause their clerks to lay before them the tax returns for the preceding year for their county, and a list of names of persons who do not appear upon the tax lists, who are residents of the county and over twenty-one years of age, from which lists the board of county commissioners or such jury commissions shall select the names of such persons who reside in the county who are of good moral character and have sufficient intelligence to serve as members of grand and petit juries. A list of the names thus selected by the board of county commissioners or such jury commissions shall be made out by the clerk of the board of county commissioners or such jury commissions and shall constitute the jury list of the county and shall be preserved as such.

The clerk of the board of county commissioners or such jury commissions, in making out the list of names to be laid before the board of county commissioners or such jury commissions, may secure said lists from such sources of information as deemed reliable which will provide the names of persons of the county above twenty-one years of age

residing within the county qualified for jury duty. There shall be excluded from said lists all those persons who have been convicted of any crime involving moral turpitude or who have been adjudged to be non compos mentis.

Section 9-2. *Names on list put in box.*—The commissioners at their regular meeting on the first Monday in July in the year nineteen hundred and five, and every two years thereafter shall cause the names on their jury list to be copied on small scrolls of paper of equal size and put into [fol. 323] a box procured for that purpose, which must have two divisions marked No. 1 and No. 2, respectively, and two locks, the key of one to be kept by the sheriff of the county, the other by the chairman of the board of commissioners, and the box by the clerk of the board.

Section 9-3. *Manner of drawing panel for term from box.*—At least twenty days before each regular or special term of the superior court, the board of commissioners of the county shall cause to be drawn from the jury box out of the partition marked No. 1, by a child not more than ten years of age, thirty-six scrolls except when the term of court is for the trial of civil cases exclusively, when they need not draw more than twenty-four scrolls. The persons whose names are inscribed on said scrolls shall serve as jurors at the term of the superior court to be held for the county ensuing such drawing, and for which they are drawn. The scrolls so drawn to make the jury shall be put into the partition marked No. 2. The said commissioners shall at the same time and in the same manner draw the names of eighteen persons who shall be summoned to appear and serve during the second week, and a like number for each succeeding week of the term of said court, unless the judge thereof shall sooner discharge all jurors from further service. The said commissioners may, at the same time and in the same manner, draw the names of eighteen other persons, who shall serve as petit jurors for the week for which they are drawn and summoned. The trial jury which has served during each week shall be discharged by the judge at the close of said week, unless the said jury shall be then actually engaged in the trial of a case, and then they shall not be discharged until the trial is determined.

Section 9-6. *Jurors having suits pending.*—If any of the jurors drawn have a suit pending and at issue in the supe-

rior court, the scrolls with their names must be returned into partition No. 1 of the jury box.

[fol. 324] Section 9-7. *Disqualified persons drawn.*—If any of the persons drawn to serve as jurors are dead, removed out of the county, or otherwise disqualified to serve as jurors, the scrolls with the names of such persons must be destroyed, and in such cases other persons shall be drawn in their stead.

Section 9-8. *How drawing to continue.*—The drawing out of partition marked No. 1 and putting the scrolls drawn into partition No. 2 shall continue until all the scrolls in partition No. 1 are drawn out, when all the scrolls shall be returned into partition No. 1 and drawn out again as herein directed.

Section 9-29. *Special venire to sheriff in capital cases.*—When a judge of the superior court deems it necessary to a fair and impartial trial of any person charged with a capital offense, he may issue to the sheriff of the county in which the trial may be a special writ of venire facias, commanding him to summon such number of persons qualified to act as jurors in said county as the judge may deem sufficient (such number being designated in the writ), to appear on some specified day of the term as jurors of said court; and the sheriff shall forthwith execute the writ and return it to the clerk of the court on the day when it is returnable, with the names of the jurors summoned.

Section 9-30. *Drawn from jury box in court by judge's order.*—When a judge deems a special venire necessary, he may, at his discretion, issue an order to the clerk of the board of commissioners for the county, commanding him to bring into open court forthwith the jury boxes of the county and he shall cause the number of scrolls as designated by him to be drawn from box number one by a child under ten years of age. The names so drawn shall constitute the special venire, and the clerk of the superior court shall insert their names in the writ of venire, and deliver the same to the sheriff of the county, and the persons named in the writ and no others shall be summoned by the sheriff. If the special venire is exhausted before the jury is chosen, the [fol. 325] judge shall order another special venire until the jury has been chosen. The scrolls containing the names of the persons drawn as jurors from box number one shall,

after the jury is chosen, be placed in box number two, and if box number one is exhausted before the jury is chosen, the drawing shall be completed from box number two after the same has been well shaken.

§ 14-21. *Punishment for rape.*—Every person who is convicted of ravishing and carnally knowing any female of the age of twelve years or more by force and against her will, or who is convicted of unlawfully and carnally knowing and abusing any female child under the age of twelve years, shall suffer death.

[fol. 326] [File endorsement omitted]

EXHIBIT 3 TO ANSWER—Filed July 5, 1951

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 488, Misc.—

CLYDE BROWN, Petitioner

vs.

STATE OF NORTH CAROLINA

On petition for writ of Certiorari to the Supreme Court of the State of North Carolina.

On consideration of the petition for a writ of certiorari herein to the Supreme Court of the State of North Carolina. It is ordered by this Court that the said petition be, and the same is hereby, denied.

May 28, 1951.

Mr. Justice Black and Mr. Justice Douglas are of the opinion that certiorari should be granted.

A true copy. Test:

Charles Elmore Cropley, Clerk of the Supreme Court of the United States, by Hugh W. Barr, Deputy.

[fol. 327] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed July 19, 1951

FINDINGS OF FACT

Upon the petition, the answer thereto, and the exhibits filed by the respondent, the Court finds these facts:

1. On the 2nd day of July, 1951, the petitioner filed in this Court a petition for a writ of habeas corpus alleging that he is being unjustly and unlawfully held in custody by the respondent by virtue of a judgment and sentence of death imposed upon him by the Superior Court of North Carolina sitting in Forsyth County, and praying that he be relieved of such unlawful detention, imprisonment and sentence of death; upon filing of the petition an order was entered requiring respondent to show cause on July 5, 1951, why such writ should not issue, and on the return date respondent appeared through counsel and filed answer denying that the detention of petitioner was unlawful and praying that the writ be denied on the face of the record itself. In support of his prayer that the writ be denied and the petition dismissed, the respondent, without objection, introduced the following exhibits: No. 1. Record on Appeal to the Supreme Court of North Carolina; No. 2. Petition to Supreme Court of the United States; No. 3. Attested Copy of Order Denying the Petition; No. 4. Addendum to Record in the Supreme Court of North Carolina; No. 5. Defendant's Brief Before the Supreme Court of North Carolina; No. 6. State's Brief Before the Supreme [fol. 328] Court of North Carolina; No. 7. State's Brief Opposing Petition for Writ of Certiorari; No. 8. Official Advance Sheets Reporting Decision of Supreme Court of North Carolina.

2. At September Term, 1950, of the Superior Court sitting in Forsyth County, the petitioner was indicted by a grand jury drawn from the body of that County for the crime of rape, and, in accordance with the North Carolina statutes and the practice in the Courts of that State, a special venire was drawn from the regular jury boxes of the

County to appear on the 12th day of September, 1950, as a panel from which the trial jury might be selected.

3. Before the selection of the jury, and before pleading to the bill of indictment, the petitioner through his counsel, Mr. Hosea Price of the Forsyth County Bar, lodged motion to quash the indictment upon the ground that it "was drawn with a view to and purpose in mind of systematically limiting representation thereon of negroes or persons of African descent" and "in a manner which violates the Constitutional rights of this defendant". Thereupon, the trial Judge proceeded to hear evidence on the motion and the petitioner was afforded a full and fair opportunity to offer such evidence as he desired; the evidence in support and opposition to the motion is fully stated in the Record on Appeal to the Supreme Court, beginning on page 22 and ending on page 49; after a full and impartial hearing the trial Judge concluded that the petitioner had not sustained the motion, and it was denied. The Court found the facts specifically, and the findings and conclusions of law are set out in the Record on Appeal to the Supreme Court of North Carolina, beginning on page 49 and ending on page 52. The petitioner excepted to the order.

4. Thereupon, a trial jury was selected according to [fol. 329] North Carolina law and practice from the special venire theretofore drawn from the jury boxes, and the jury found the petitioner guilty of rape as charged without recommendation of mercy, as permitted by the North Carolina law, and petitioner excepted.

5. When judgment upon the verdict was prayed by the State, the petitioner moved in arrest, alleging for the first time the additional ground in support of the earlier motion to quash "that the jury commissioners did not prepare and hand over to the Clerk of the County Commissioners a list of other qualified citizens whose names do not appear on the tax lists as required by General Statute 9, subsection 1". This motion was overruled and petitioner excepted.

6. Upon the verdict the Court sentenced the petitioner to death, as required by the North Carolina statute.

7. During the trial the State offered to put in evidence an alleged statement made by the petitioner, containing

certain damaging admissions, and upon objection entered the Court in the absence of the jury and, in accord with North Carolina law and practice, heard evidence to determine whether such alleged statements were voluntary; after a full hearing, during which petitioner was afforded a fair opportunity to present such evidence as he desired and after argument the Court concluded that the statements were voluntarily made and admitted them for the consideration of the jury. The petitioner excepted. The evidence bearing on this question, together with the Court's finding, are set out in the Record on Appeal to the Supreme Court of North Carolina, beginning at page 94 and ending on page 133.

8. From the judgment the petitioner, with permission of the Court, appealed in forma pauperis to the Supreme Court of North Carolina, assigning, among others not here pertinent, errors as follows: "No. 1. The Court erred in overruling the defendant's motion to quash the bill of in- [fol. 330] dictment against the defendant . . ." and "No. 3. The Court erred in its ruling that the statements made by the defendant which purported to be a confession were freely and voluntarily given, and that same was competent evidence : . ."

9. The Supreme Court of North Carolina, at its Fall Term, 950, affirmed the judgment of the Superior Court (233 N. C., page 202), stating: "A person accused of crime is entitled to have the charges against him performed by a jury in the selection of which there has been neither inclusion nor exclusion because of race. This the defendant has had in both the grand and petit juries which performed in the case, or, at least, the contrary in respect to neither has been made to appear on the record. Hence, his claim of jury defect or irregularity is unavailing". In the opinion it is also stated with respect to the assignment of error in admitting the confession: "The only basis of challenge to the competency of defendant's confession is that he was under arrest, being held without warrant, and was in custody at the time it was given. These circumstances, taken singly or all together, unless they amounted to coercion, were not sufficient in and of themselves to render a confession, otherwise voluntary, involuntary as a matter of law and incompetent as evidence. After a

preliminary investigation, pursuant to the procedure outlined in *State v. Whitener*, 191 N. C., p. 659, the trial Court ruled the confession to be voluntary, and permitted the Solicitor to offer it in evidence against the prisoner. The ruling is fully supported by the evidence. . . . The contentions of error in its admission are without force or substance".

10. Following the decision of the Supreme Court of North Carolina, affirming the judgment of the trial Court, the petitioner filed petition in the Supreme Court of the United States for writ of certiorari, alleging "violation [fol. 331] of the rights of the defendant as guaranteed him under the fifth and fourteenth amendment to the Constitution of the United States, in that members of said grand jury were selected and drawn with a view and purpose of systematically limiting the representation thereon of persons of the negro race . . . with the result that petitioner and members of his race are unlawfully discriminated against"; and that "the State was allowed to introduce into evidence statements of petitioner in the nature of confessions of the alleged crime". On May 28, 1951, this petition was denied with the notation: "Mr. Justice Black and Mr. Justice Douglas are of the opinion that certiorari should be granted".

11. Petitioner is a member of the negro race.

12. The facts found by the trial Judge, in respect to the composition of the grand jury, are supported by the evidence before him, and these findings and the conclusion thereon are adopted as findings in this respect, and the facts found by that Court in respect to the question of admission of statements made by the defendant are also supported by the evidence, and these findings and the conclusions thereon are likewise adopted.

13. The petitioner was represented by experienced and capable counsel at every stage of the proceedings in the State Courts, and petitioner and his counsel were given full and fair opportunities to present evidence and argument with respect to the two alleged violations of his Constitutional rights, which were there raised and adjudicated and which he now attempts to raise again.

14. The remedies provided by the law of North Carolina

through resort to its Courts afforded to petitioner a full and fair adjudication of the federal questions now raised.

[fol. 332] Conclusions of Law

Upon these facts, the Court concludes:

1. That the record and findings thereon present no unusual situation, and a respectful consideration for the action of the North Carolina Courts and the denial of certiorari by the Supreme Court of the United States requires that the petition for writ of habeas corpus be denied and that the petition be dismissed.

2. That the stay of execution under the judgment against the petitioner in the State Court should be vacated.

July 19th, 1951.

Don Gilliam, United States District Judge.

[fol. 333] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

[Title omitted]

MEMORANDUM OPINION—Filed July 19, 1951

The petitioner was convicted of the capital offense of rape in the Superior Court of North Carolina, sitting in Forsyth County, and thereupon sentenced to death as provided by the North Carolina statute. Before pleading to the indictment the petitioner moved to quash upon the ground that there had been systematic and arbitrary exclusion of negroes solely on account of race. The Court heard evidence from the petitioner and afforded him and his counsel full and fair opportunity to substantiate the contention. Upon such evidence the trial Court ruled against petitioner and denied the motion. The evidence and conclusion of the trial Court are in the record.

During the trial alleged statements of petitioner were offered by the State and objected to by petitioner on the

ground that such statements were involuntary and, therefore, incompetent.

Following the North Carolina law and practice in its Courts, the jury was excused, petitioner's counsel was permitted to cross-examine the witnesses to whom the statements were made, petitioner gave his version of the conditions under which the statements were made, and petitioner was allowed full opportunity to present such evidence as he wished in this respect. The Court ruled that the statements were voluntarily made, overruled the objection, and the statements were admitted for the jury's consideration. The evidence and the conclusion of the trial Judge are in the record.

[fol. 334] Upon appeal to the Supreme Court of North Carolina, the petitioner assigned as errors both the ruling of the trial Court in overruling the motion to quash the indictment and the admission of the confessions as evidence. The Supreme Court of North Carolina upheld the conviction and affirmed the judgment, saying in its opinion: "A person accused of crime is entitled to have the charges against him performed by a jury in the selection of which there has been neither inclusion nor exclusion because of race. This the defendant has had in both the grand and petit juries which performed in the case, or, at least, the contrary in respect to neither has been made to appear on the record. Hence, his claim of jury defect or irregularity is unavailing"; and "The only basis of challenge to the competency of defendant's confession is that he was under arrest, being held without warrant, and was in custody at the time it was given. These circumstances, taken singly or all together, unless they amounted to coercion, were not sufficient in and of themselves to render a confession, otherwise voluntary, involuntary as a matter of law and incompetent as evidence. After preliminary investigation, pursuant to the procedure outlined in *State* v. *Whitener*, 191 N. C. 659, the trial Court ruled the confession to be voluntary and permitted the Solicitor to offer it in evidence against the prisoner. The ruling is fully supported by the evidence. . . . The contentions of error in its admission are without force or substance."

A petition for writ of certiorari was then filed in the Supreme Court, assigning as ground the two alleged errors

presented to the Supreme Court of North Carolina, and on May 28, 1951 this petition was denied by an order containing this notation: "Mr. Justice Black and Mr. Justice Douglas are of the opinion that certiorari should be granted."

It is not asserted or even suggested by the petitioner that adequate remedies are not provided by North Carolina law [fol. 335] to correct the wrongs about which he now complains; in fact, it must be admitted that such remedies existed and that he and his counsel took full advantage of them. It cannot be maintained, in fact, it is not even alleged, that petitioner was in any way or to any extent limited or restricted in his resort to such remedies. No one, upon the record, would conclude that the action of the State Courts in deciding the questions now raised was indifferently or lightly considered. The decision in each instance was reached after painstaking and careful procedure in accordance with law and practice and only after petitioner had had his full say. The petitioner has had his day in Court and his present positions have been rejected by a Court which had and did not lose jurisdiction and on a record which seems to demonstrate that petitioner was given a fair and impartial trial, in which he was accorded all rights guaranteed to him by the federal Constitution and dictated by the principles of justice. In addition, the Supreme Court of the United States has refused to review such action of the State Court. The record does not present any unusual situation which would justify the issue of the writ and, therefore, the petition for such writ has been denied.

It would serve no good purpose to review the cases. Two cases decided by our Circuit Court of Appeals clearly support, it seems, the conclusion reached. These are: *Stonebreaker* v. *Smith*, 163 Fed. 2d 498, and *Jerry Adkins* v. *W. Frank Smith*, decided April 10, 1951. In the latter, quoting with approval from the former, the Court said: "We are confronted at the outset with the fact that the case presented by petitioner is precisely the same as that in which relief was denied by the Virginia Courts and in which certiorari was denied by the Supreme Court of the United States. The rights of petitioner were fully presented in that case and the Virginia Courts had full power to grant the relief asked, had they thought petitioner entitled to it. The facts [fol. 336] were fully before the Supreme Court of the United

States on certiorari and proper respect for that Court compels the conclusion that if it had thought that the record showed a denial of petitioner's constitutional rights, certiorari would have been granted and petitioner would have been afforded relief. While action of the Virginia Courts and the denial of certiorari by the Supreme Court were not binding on the principle of res judicata, they were matters entitled to respectful consideration by the court below; and, in the absence of some most unusual situation, they were sufficient reason for that court to deny a further writ of habeas corpus. It would be intolerable that a federal district court should release a prisoner on habeas corpus after the state courts have refused him relief in precisely the same case on a similar writ and the United States Supreme Court has refused to review their action on certiorari. This would be, in effect, to permit a federal district court to review the Supreme Court of the United States as well as the highest court of the State."

There appears no semblance or reason for a departure from the general rule laid down in these two cases.

An order will be entered denying the petition for writ of habeas corpus and vacating the stay of execution of judgment in the State Court which was heretofore entered.

July 19th, 1951.

Don Gilliam, United States District Judge.

[fols. 337-337m-344] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA

[Title omitted]

ORDER DENYING PETITION—Filed July 19, 1951

The Court having concluded upon the petition, the answer thereto, and the exhibits filed by the respondent with his answer, that the writ of habeas corpus should not issue, and the Court having filed its findings of fact separately, together with its conclusions of law thereupon, it is now ordered and decreed that the petition for a writ of habeas

corpus be and the same is denied, the petition is dismissed, and the stay of execution of the judgment of the North Carolina Court heretofore issued is vacated.

It is also ordered that a certified copy of this order, under the seal of the Court, be served upon the respondent as his authority for further proceedings under the State Court judgment.

July 19th, 1951.

Don Gilliam, United States District Judge.

[fol. 345] UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[Title omitted]

ORDER OF SUBSTITUTION—Filed October 13, 1951

[fol. 346] Counsel for the Appellee in the above case having informed the Court that the Appellee, J. P. Crawford, Warden of the Central Prison of the State of North Carolina, has resigned and ceases to hold said office, and that he has been succeeded by Robert A. Allen, as Warden of the said Central Prison of the State of North Carolina,

And it Appearing that assent has been duly given that said Robert A. Allen as Warden be substituted in lieu of said J. P. Crawford, resigned, It Is Ordered that Robert A. Allen, Warden of the Central Prison of the State of North Carolina, be, and he is hereby, substituted as party Appellee in the place and stead of the said J. P. Crawford.

October 13, 1951.

John J. Parker, Chief Judge, Fourth Circuit.

[fol. 347] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 6331

RALEIGH SPELLER, Appellant,

versus

ROBERT A. ALLEN, Warden, Central Prison of the State of North Carolina, Raleigh, North Carolina, Appellee

No. 6332

CLYDE BROWN, Appellant,

versus

ROBERT A. ALLEN, Warden, Central Prison of the State of North Carolina, Raleigh, North Carolina, Appellee

Appeals from the United States District Court for the Eastern District of North Carolina, at Raleigh

(Argued October 12, 1951. Decided November 5, 1951)

[fol. 348] Before Parker, Soper and Dobie, Circuit Judges

Herman L. Taylor (C. J. Gates on Brief) for Appellant in No. 6331; Hosea V. Price (Herman L. Taylor on Brief) for Appellant in No. 6332; E. O. Brogden, Jr. Attorney for State Highway and Public Works Commission of North Carolina, for Appellee in No. 6331; R. Brookes Peters, Jr., General Counsel of State Highway & Public Works Commission of North Carolina, for Appellee in No. 6332; (Harry McMullan, Attorney General of North Carolina, on Briefs for Appellee in Nos. 6331 and 6332)

OPINION—Filed November 5, 1951

Per CURIAM:

These are appeals from denials of writs of habeas corpus in cases in which appellants have been convicted of capital

felonies and sentenced to death by North Carolina state courts. In both cases the questions raised in the petitions for habeas corpus had been raised and passed upon by the trial court, the action of the trial court had been affirmed by the Supreme Court of the state and the Supreme Court of the United States had denied certiorari.* *State* v. *Speller*, 231 N. C. 549, 57 S. E. 2d 759, cert. denied *Speller* v. *North Carolina*, 340 U. S. 835; *State* v. *Brown*, 233 N. C. 202, 63 S. E. 2d 99, cert. denied *Brown* v. *Carolina*, 341 U. S. 943. In the Speller case the court below, after granting the writ [fol. 349] of habeas corpus and hearing evidence on the question presented and deciding that appellant's position was without merit, vacated the writ and dismissed the petition on the ground that upon the procedural history of the case the appellant was not entitled to the writ. In the Brown case the petition for the writ was denied without hearing, on the basis of its procedural history. We think that dismissal in both cases was clearly right. In view of the action of the state Supreme Court upon the identical questions presented to the court below and the denial of certiorari by the Supreme Court of the United States, the cases fall squarely within the rule that "a federal court will not ordinarily re-examine upon a writ of habeas corpus the questions thus adjudicated." *Ex Parte Hawk*, 321 U. S. 114, 64 S. Ct. 448, 450, 88 L. Ed. 572; *Darr* v. *Burford*, 339 U. S. 200, 70 S. Ct. 587, 94 L. Ed. 761; *Adkins* v. *Smyth*, 4 Cir. 188 F. 2d 452; *Goodwin* v. *Smyth*, 4 Cir., 181 F. 2d 498; *Stonebreaker* v. *Smyth*, 4 Cir., 163 F. 2d 498, 499. As said by this court in the case last cited:

> "We are confronted at the outset with the fact that the case presented by petitioner is precisely the same as that in which relief was denied by the Virginia courts and in which certiorari was denied by the Supreme Court of the United States. The rights of petitioner were fully presented in that case and the Virginia courts had full power to grant the relief asked, had they

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* Two prior convictions of Speller on the same charge had been reversed by the North Carolina Supreme Court because of discrimination against Negroes in the selection of juries. *State* v. *Speller*, 229 N. C. 67, 47 S. E. 2d 537; *State* v. *Speller*, 230 N. C. 345, 53 S. E. 2d 294.

thought petitioner entitled to it. The facts were fully before the Supreme Court of the United States on certiorari; and proper respect for that court compels the conclusion that if it had thought that the record showed a denial of petitioner's constitutional rights, certiorari would have been granted and petitioner would have been afforded relief. While action of the Virginia courts and the denial of certiorari by the Supreme Court were not binding on the principle of res judicata, [fol. 350] they were matters entitled to respectful consideration by the court below; and in the absence of some most unusual situation, they were sufficient reason for that court to deny a further writ of habeas corpus. It would be intolerable that a federal district court should release a prisoner on habeas corpus after the state courts have refused him relief in precisely the same case on a similar writ and the United States Supreme Court has refused to review their action on certiorari. This would be, in effect, to permit a federal district court to review the Supreme Court of the United States as well as the highest court of the state. The rule in such cases was stated in the case of *White* v. *Ragen*, 324 U. S. 760, 764, 765, 65 S. Ct. 978, 981, 89 L. Ed. 1348, relied on by the court below, as follows: 'If this Court denies certiorari after a state court decision on the merits, or if it reviews the case on the merits, a federal District Court will not usually re-examine on habeas corpus the questions thus adjudicated. *Ex parte Hawk, supra*, 321 U. S. 114, 118, 64 S. Ct. 448, 88 L. Ed. 572.'

"The citation of Ex parte Hawk shows what the court had in mind in the use of the words 'will not usually re-examine' in the statement just quoted; for the court had pointed out in that case the sort of cases in which the district court would be justified in granting habeas corpus notwithstanding the denial of certiorari in cases where the state court had refused to grant relief. These were cases where resort to state court remedies had failed to afford a full and fair adjudication of the federal contentions raised either because the state afforded no remedy or because the remedy af-

forded proved in practice unavailable or seriously inadequate."

Affirmed.

[fol. 351] In United States Court of Appeals for the Fourth Circuit

No. 6332

Clyde Brown, Appellant,

vs.

Robert A. Allen, Warden, Central Prison of the State of North Carolina, Raleigh, North Carolina, Appellee

Appeal from the United States District Court for the Eastern District of North Carolina

Judgment—Filed and Entered November 5, 1951

This Cause came on to be heard on the record from the United States District Court for the Eastern District of North Carolina, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed with costs.

November 5th, 1951.

John J. Parker, Chief Judge, Fourth Circuit.

[fol. 352] Order Authorizing Clerk to Use Original Transcript of Record in Making Up Record for Use in the Supreme Court of the United States on Application for Writ of Certiorari (omitted in printing).

[fol. 353] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 354] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 333, Misc.

CLYDE BROWN, Petitioner,

vs.

ROBERT A. ALLEN, Warden, Central Prison of the State of North Carolina

ORDER ALLOWING CERTIORARI—March 24, 1952

On petition for writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

On consideration of the motion for leave to proceed in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 670. The case is placed on the summary docket and assigned for argument immediately following No. 643, Speller vs. Allen, Warden.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 355] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 670

[Title omitted]

STIPULATION—April 9, 1952

It is stipulated by and between Counsel for Petitioner and Counsel for Respondent that the portion of the record in the appeal of the above entitled matter to be printed for

the hearing of this case on the merits shall consist of the following:

From Volume I of the Record in United States Court of Appeals for the Fourth Circuit:

[fols. 356-357]

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* The page numbers so designated are page numbers given exhibits incorporated by reference in respondent's answer to the petition to the District Court. These exhibits so designated are multi-page pamphlets and the page numbers which follow are references to the pages of each pamphlet.

This the 9th day of April, 1952

Herman L. Taylor, Counsel for Petitioner. Harry McMullan, Attorney General of North Carolina; Ralph Moody, Assistant Attorney General; R. Brooks Peters, Jr., General Counsel of State Highway & Public Works Commission; E. O. Brogden, Jr., Attorney for State Highway & Public Works Comm., Counsel for Robert A. Allen, Respondent.